United States Court of Appeals for the Second Circuit



APPENDIX

ORIGINAL

75-7179

United States Court of Appeals

For the Second Circuit.

CHARLES SCALAFANI,

Plaintiff-Appellee,

against

MOG E McCo. ACK LINES, Inc., "Mormacdrago" D/A 1/2/71,

Defendant-Appellant and Third Party

Plaintiff-Appellee,

against

UNIVERSAL TERMINAL AND STEVEDORING CORP.,

Third Party Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK.

JOINT APPENDIX.

COMMETTE, QUENCER & ANNUNZIATO,
Attorneys for Third Party Defendant-Appellant,
MCHUGH, HECKMAN, SMITH & LEONARD,
Of Counsel,
80 Pine Street,

New York, N. Y. 10005

Dougherty, Ryan, Mahoney, Pellegrino & Giuffra,
Attorneys for Defendant-Appellant and Third Party
Plaintiff-Appellee,
576 Fifth Avenue,

New York, N. Y. 10036

IRVING S. BUSHLOW,

Attorney for Plaintiff-Appellee,

60 East 42nd Street,

New York, N. Y. 10017

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SECOND CIRCUIT

THE REPORTER COMPANY, INC., New York, N. Y. 10007—212 732-6978—1975 (6468) PAGINATION AS IN ORIGINAL COPY

INDEX TO APPENDIX.

		E	Page
Docket Entries			2a
Complaint			5a
Answer of Moore-McCormack Lines, Inc.			8a
Third Party Summons			10a
Third-Party Complaint			12a
Answer of Third Party Defendant			16a
Plaintiff's Interrogatories			18a
Defendant's Interrogatories	•		25a
Third Party Defendant's Answers to			
Interrogatories			29a
Report Annexed to Third Party Defendant's			
Answers to Interrogatories			31a
Plaintiff's Answer to Interrogatories .			32a
Transcript of May 6, 1974			38a
Examination Before Trial of Defendant			
(Gerald Gordon)			87a
Transcript of September 24, 1974			106a
Transcript of September 23, 1974		•	116a
Memorandum Decision by Costantino, D. J	•	•	199a
Defendant's Notice of Appeal		•	207a
Notice of Appeal by Third Party Defendant			208a

TESTIMONY.

WITNESSES FOR PLAINTIFF:

				Page
Bianchi, Bianco:				
Direct by Mr. Bushlow				173a
Cross by Mr. Giuffra				180a
Misseri, Anthony:				
Direct by Mr. Bushlow				144a
Cross by Mr. Giuffra				152a
Cross by Mr. Commette		•		166a
Scalafani, Charles:				
Direct by Mr. Bushlow				40a
Cross by Mr. Giuffra				55a
Cross by Mr. Commette				82a
Recalled:				
Cross by Mr. Giuffra			•	118a
Cross by Mr. Commette				132a

UNITED STATES COURT OF APPEALS, FOR THE SECOND CIRCUIT.

-v

CHARLES SCALAFANI,

Plaintiff-Appellee.

-against-

MOORE MCCORMACK LINES, INC., "MORMACDRAGO" D/A 1/2/71

Defendant-Appellant and Third Party Plaintiff-Appellee,

-against-

UNIVERSAL TERMINAL AND STEVEDORING CORP.,

Third Party Defendant-Appellant.

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DOCKET ENTRIES.

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Date	
5-5-72	Complaint filed. Summons Issued.
5/17/72	Summons returned & filed/executed.
7-6-72	ANSWER of deft Moore-McCormack Lines, Inc
	etc. filed.
7-6-72	THIRD PARTY COMPLAINT FILED, Third party
	Summons issued.
8/9/72	THIRD PARTY summons returned & filed,
	Third Party deft served
8/14/72	Third Party deft answers to third party
	pltff, interrogatories filed.
8-14-72	ANSWER of third party deft filed.
8/28/72	Deft's notice to take pltff's & third-part
	deft's deposition filed.
10/10/72	Third-party deft's cross-notice to take
	pltff's deposition filed
8-17-73	Defendant's Interrogatories to Plaintiff
	filed
8-17-73	Defendant's Interrogatories to Third Party
	Pltff's filed.

12-11-73 Before COSTANTINO, J. - Case called & adjd. to 2-13-74 @ 10 A.M. for trial.

MARITIME SERV.) Filed.

11/2/73 Answers to Interrogatories (Answers of UNIV.

DOCKET ENTRIES

Date

- 1-11-74 Notice to take deposition of Gerald Gordon ret. 1-15-74 @ 2:30 P.M. filed.
- 2-13-74 Before COSTANTINO, J Case called & adj'd to 5-6-74 at 10 A.M. for trial.
- 4/25/74 Answers of pltff to interrogatories filed.
- 5-6-74 Before COSTANTINO, J. Case called. Trial ordered & begun. Trial continued to 5-9-74 at 10 A.M.
- 5-9-74 Before COSTANTINO, J. Case called & trial adjd to 5-23-74 @ 10:00 A.M.
- 5/13/74 Stenographer's transcript of 5/6/74 filed
- 5/23/74 Before COSTANTINO, J. Case called- Trial adjd to 7/8/74
- 7-8-74 Before COSTANTINO, J. Case called & trial adj'd to 7-22-74.
- 9/23/74 Deposition of deft and Third Party pltff by F. Gordon filed. P.C. sent to attys.
- 9/23/74 Before COSTANTINO, J. Case called- Trial resumed- Trial cont'd to 9/24/74 at 11:00 A.M.
- 9/24/74 Before CONSTANTINO, J. Case called- Trial resumed and concluded- Motions to dismissDecision reserved-Submit findings of fact and conclusions of law by 10/18/74 and answering papers by 10/25/74

DOCKET ENTRIES

Date

- 10/4/74 Stenographer's transcript of Sept. 24, 1974 filed.
- 10/4/74 Stenographer's transcript of Sept. 23 1974 filed.
- 11/8/74 Deft and Third Party Pltff's Post Trial Memoran. of Law filed.
- 11-15-74 Pltff's reply memorandum filed.
- 11-18-74 Reply memorandum of law and comments filed.
- 11-18-74 Third-party deft's reply memorandum filed.
- 2-10-75 By COSTANTINO, J. Memorandum Decision dtd
 2-10-75 that Universal is liable to Mormac for
 whatever sums are assessed in pltff's favor
 against Mormac filed. (p/c mailed to attys).
- 2-20-75 Before COSTANTINO, J. Case called & adj'd without date.
- 3-12-75 Notice of appeal filed. Copy sent to C of A.

 JN
- 4-12-75 Notice of appeal filed. Copy sent to C of A.
- 4-17-75 Record on appeal certified and handed to
 Walter Risi for delivery to C of A. Acknowledgment for receipt requested.

COMPLAINT.

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK.

CHARLES SCALAFANI,

Plaintiff,

-aguinst-

MOORE MCCORMACK LINES, INC.,
"MORMACDRAGO" D/A 1/2/71

Defendant.

Plaintiff demands trial by jury.

Plaintiff for his complaint respectfully sets forth as follows:

FIRST: That at all times hereinafter mentioned the plaintiff was and is a citizen of the United States and of the State of New York residing at 249 Newkirk Avenue, Brooklyn, New York.

SECOND: Upon information and belief that at all times hereinafter mentioned the defendant was a domestic corporation with a place of doing business located at Two Broadway, New York, New York.

COMPLAINT

THIRD: Upon information and belief that at all the times hereinafter mentioned the defendant was the owner of the vessel, "MORMACDRAGO."

FOURTH: That at all the times hereinafter mentioned the said defendant operated, controlled, manned and provisioned the said vessel.

FIFTH: That on or about the ?nd day of January 1971, the said vessel was moored at 23rd Street Pier, Brooklyn, New York.

SIXTH: That on or about the 2nd day of January 1971, the said defendant had engaged the services of Universal Terminal & Stevedoring Corp. to perform stevedoring operations aboard the "MORMACDRAGO."

SEVENTH: That on or about the 2nd day of January 1971, while plaintiff CHARLES SCALAFANI, was lawfully aboard the MORMACDRAGO as an employee of Universal Terminal & Stevedoring Corp. was caused to sustain severe and permanent personal injuries through no fault or want of care on his part but solely as a result of the carelessness and negligence of the defendant, its servants, agents, and/or employees, in failing to provide the plaintiff with a safe place to work and/or the failure of said defendant to provide plaintiff with a seaworthy vessel.

COMPLAINT

EIGHTH: That as a result of the foregoing plaintiff was disabled and endured great pain and suffering, required medical care for the alleviation and cure of his injuries and was compelled to forego his customary occupation and recreation all to his damages in the sum of ONE HUNDRED THOUSAND (\$100,000.00) DOLLARS.

NINTH: That this honorable court has jurisdiction over the parties herein and the subject matter of this action pursuant to sections 1332 and 1333 of the United States Code.

WHEREFORE, plaintiff demands judgement in the sum of ONE HUNDRED THOUSAND (\$100,000.00) DOLLARS together with costs and disbursements of this action against the defendant berein.

DATED: Brooklyn, New York

Yours, etc.,

IRVING B. BUSHLOW
Attorney for Plaintiff
26 Court Street
Brooklyn, Now York 11201
MA5-1336

ANSWER OF MOORE-MCCORMACK LINES, INC.

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK.

SAME TITLE

Defendant, MOORE-MCCORMACK LINES, INC., answering the complaint of the plaintiff herein, by its attorneys, DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & GIUFFRA, respectfully shows to the Court and alleges upon information and belief:

FIRST: It denies that it has knowledge or information sufficient to form a belief as to the allegations contained in paragraph FIRST of the complaint.

SECOND: It denies the allegations contained in paragraph SECOND of the complaint.

THIRD: It admits the allegations contained in paragraphs THIRD, FOURTH and FIFTH of the complaint.

FOURTH: It denies that it has knowledge or information sufficient to form a belief as to the allegations contained in paragraph SIXTH of the complaint.

FIFTH: It denis the allegations contained in paragraphs SEVENTH, EIGHTH and NINTH of the complaint.

ANSWER OF MOORE-MCCORMACK LINES, INC

FURTHER ANSWERING AND AS AND FOR A FIRST AFFIRMATIVE DEFENSE, DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:

SIXTH: That whatever injuries the plaintiff may have sustained at the time and place mentioned in the complaint, if any, were caused in whole or in part or were contributed to by the negligence, fault and want of care on the part of the plaintiff and the defendant pleads the contributory negligence of the plaintiff herein, as a bar to any recovery herein, by the plaintiff against the defendant.

WHEREFORE, defendant demands judgment dismissing the complaint, together with the costs and disbursements of this action.

DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & GIUFFRA Attorneys for Defendant BY: ROBERT J. GIUFFRA Office and P. O. Address 576 Fifth Avenue New York, New York 10036

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THIRD PARTY SUMMONS.

UNITED STATES DISTRICT COURT

for the

EASTERN DISTRICT OF NEW YORK.

-x

CHARLES SCALAFANI,

Plaintiff,

υ.

MOORE-MCCORMACK LINES, INC.,
"MORMACDRACO" D/A 1/2/71

Defendant and Third-Party Plaintiff,

υ.

UNIVERSAL TERMINAL & STEVEDORING CORP.,

Third-Party Defendant.

Civil Action File No. 72 Civ. 572.

-x

To the above-named Third-Party Defendant:

You are hereby summoned and required to serve upon Irving B. Bushlow plaintiff's attorney, whose address is 26 Court Street, Brooklyn, New York 11201 and upon Dougherty, Ryan, Mahoney, Pellegrino & Giuffra who is attorney for the above-named defendant and third-party plaintiff, and whose address is 576 Fifth Avenue, New York, New York 10036 an answer to the third-party

THIRD PARTY SUMMONS

days after the service of this summons upon you exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the third-party complaint. There is also served upon you herewith a copy of the complaint of the plaintiff which you may but are not required to answer.

LEWIS ORGEL
Clerk of the Court.

By MILDRED LAZANSKY
Deputy Clerk.

THIRD-PARTY COMPLAINT.

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK.

SAME TITLE

Defendant and third-party plaintiff, MOORE-McCORMACK LINES, INC., for its third-party complaint against UNIVERSAL TERMINAL & STEVEDORING CORP., the above named third-party defendant, alleges upon information and belief:

AS AND FOR A FIRST CAUSE OF ACTION

FIRST: Plaintiff, CHARLES SCALAFANI, has filed a complaint, a copy of which is attached hereto, against MOORE-McCORMACK LINES, INC.

SECOND: That at all times hereinafter mentioned, the defendant and third-party plaintiff, MOORE-McCORMACK LINES, INC. was a corporation organized and existing under and by virtue of the laws of the State of Delaware.

THIRD: That at all times hereinafter mentioned, the third-party defendant, UNIVERSAL TERMINAL & STEVE-DORING CORP. was and still is a corporation, organized and existing under and by virtue of one of the States of the United States with offices and principal places of business in the jurisdiction of this Honorable Court.

THIRD-PARTY COMPLAINT

FOURTH: That at all times hereinafter mentioned, the third-party defendant, UNIVERSAL TERMINAL & STEVE-DORING CORP., was and still is engaged in the stevedoring business in the Port of New York.

FIFTH: That on or prior to January 2, 1971, the third-party defendant, UNIVERSAL TERMINAL & STEVEDORING CORP., agreed to perform stevedoring services aboard the SS "MORMACDRACO" at Brooklyn, New York.

SIXTH: That on or about January 2, 1971, pursuant to said agreement, the third-party defendant, UNIVERSAL TERMINAL & STEVEDORING CORP., was engaged in the performance of work aboard the SS "MORMACDRACO".

SEVENTH: That at all times mentioned in the complaint, the securing of cargo, together with all the holds, hatches, hatch covers, decks, winches, tackle, gear and other appurtenances aboard the vessel were under the complete control of the third-party defendant.

EIGHTH: That if the plaintiff was injured as alleged in the complaint, which is expressly denied, then the plaintiff's injuries were caused by the negligence and carelessness of the third-party defendant, its agents, servants, and/or employees in that the said third-party defendant performed its work in a careless and negligent manner; by causing an unseaworthy condition

THIRD-FARTY COMPLAINT

aboard the vessel; by failing to have due regard for the safety of those aboard the vessel; by failing to perform the stevedoring work in accordance with the stevedoring agreement; by failing to properly to inspect the vessels, decks, gangways and work areas; by failing to properly instruct, supervise and control its servants, agents and/or employees; and in being otherwise careless and negligent in the premises and without any fault or negligence on the part of the third-party plaintiff.

AS AND FOR A SECOND CAUSE OF ACTION

NINTH: Third-party plaintiff repeats, reiterates and realleges each and every allegation contained in the first cause of action with the same force and effect as if herein set forth at length and in addition thereto alleges:

TENTH: That in undertaking to perform the stevedoring services aboard the aforsaid vessel, the thirdparty defendant warranted to perform the said work in a safe and proper manner.

ELEVENTH: That the third-party defendant breached its express or implied warranties in failing to perform the said work aboard the vessel in a safe and proper manner.

THIRD-PARTY COMPLAINT

TWELFTH: That the third-party plaintiff has performed all the conditions of the said contract on its part to be performed.

THIRTEENTH: That by reason of the premises hereinbefore set forth, the third-party plaintiff should be entitled to indemnity to the full extent of any damages awarded against it from the third-party defendant, together with the costs and disbursements of this action, including attorneys' fees.

WHEREFORE, the third-party plaintiff, MOORE McCORMACK LINES, INC., demands judgment against the third-party defendant, UNIVERSAL TERMINAL & STEVEDORING CORP., for all sums that may be adjudged against the defendant, MOORE McCORMACK LINES, INC., in favor of the plaintiff CHARLES SCALAFANI, together with the costs and disbursements of this action, including attorneys' fees.

DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & GIUFFRA Attorneys for Defendant & Third-Party Plaintiff BY: ROBERT J. GIUFFRA Office and P. O. Address 576 Fifth Avenue New York, New York 10036

ANSWER OF THIRD PARTY DEFENDANT.

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK.

SAME TITLE

UNIVERSAL TERMINAL & STEVEDORING CORP., thirdparty defendant, by its attorneys BROWN QUENCER & COMMETTE answering the complaint of the third-party plaintiff herein, alleges upon information and belief:

FIRST: Denies the allegations contained in paragraph of the complaint designated SEVENTH except admits that in connection with its work third-party defendant used certain vessels equipment and gear.

SECOND: Denies the allegations contained in paragraph of the complaint designated EIGHTH.

AS TO SECOND CAUSE OF ACTION

THIRD: Repeats and reiterates all the admissions and denials contained in the foregoing answer with respect to paragraphs of the complaint designated FIRST through EIGHT as realleged and repeated in paragraph NINTH.

ANSWER OF THIRD PARTY DEFENDANT

FOURTH: Denies the allegations contained in paragraphs of the complaint designated ELEVENTH, TWELFTH and THIRTEENTH.

WHEREFORE, third-party defendant Universal Terminal & Stevedoring Corp. demands judgment dismissing the third-party complaint with costs.

BROWN QUENCER & COMMETTE
By ALBERT S. COMMETTE
A Member of the Firm
Attorneys for Third-Party
Defendant - Universal Terminal
& Stevedoring Corp.
60 East 42nd Street
New York, N. Y. 10017
682-9131

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK.

SAME TITLE

INTERROGATORIES PROPOUNDED BY THE DEFENDANT AND THIRD PARTY PLAINTIFF TO BE ANSWERED BY THE PLAINTIFF IN WRITING AND UNDER OATH:

- State each and every injury or illness you claim you suffered aboard the SS "MORMACDRACO" indicating the date, hour, and place of each injury or illness claimed.
- State which of these alleged injuries or illnesses are permanent, if any.
- State the diagnosis and the prognosis in each case.
- 4. State whether or not the injuries or illnesses you claim you suffered aggravated any pre-existing conditions and if so, give complete details.
- 5. a. State the name and address of each hospital and/or doctor who treated you for these alleged injuries or illnesses listing them separately for each alleged injury or illness.
 - b. Give the dates of treatment in each instance.

- c. It at the present time under the care of any doctor please state: (1) name of the doctor, (2) date of your last treatment by him, (3) nature of the treatment and (4) diagnosis by him.
- State the dates you were incapacitated from employment as a result of the alleged occurrence.
- 7. State the amounts you claim to have expended for (a) hospital, (b) physician's services, (c) medicines, (d) any other expenses.
- 8. State the amount you claim for loss of earnings, indicating dates between which you lost the said earnings or wages, if any.
- State whether or not you are now employed and when you returned to such employment.
- 10. Give dates of each employment after January
 2, 1971 and the amount of wages earned during each
 employment.
- 11. State whether or not you will claim that the injuries or illnesses you suffered were a result of the negligence of the officers or crewmen of the SS "MORMAC-DRACO".
- 12. If your answer to the preceding question is in the affirmative, please give complete details.

- 13. State whether or not you will claim that the injuries or illnesses you claim you suffered were a result of the unseaworthiness of the SS "MORMACDRACO".
- 14. If your answer to the preceding question is in the affirmative, please give complete details.
- 15. State in what respect the defendant and third party plaintiff failed to provide you with a reasonably safe place to work, itemizing each and every such alleged failure.

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- 16. If it is claimed that the defendant and third party plaintiff received constructive notice of the condition or conditions referred to in the complaint state further: (a) how long a period the condition existed, (b) the exact location and nature of the condition.
- 17. State the date and time you first began working aboard the SS "MORMACDRACO".
- 18. State the nature of the work you were performing aboard the SS "MORMACDRACO".
- 19. State whether the vessel was loading or discharging and the nature of the cargo being discharged or loaded.
- 20. State whether or not there were any witnesses to the plaintiff's accident.

- 21. If your answer to question No. 20 is in the affirmative, please state the following:
- (a) The name and present address of each witness.
- (b) State whether or not written reports or statements were made by the witnesses and the dates of said reports or statements.
- (c) State the name of the person to whom such reports or statements were made and their present location.
- 22. (a) State whether the plaintiffs have obtained statements of any witnesses.
- (b) If your answer to No. 22A is in the affirmative state the names and addresses of the witnesses and the dates when the statements were obtained.
- 23. If you are now suffering or have any present illness and/or injury as a result of said occurrence, please describe the same in detail, stating the parts of your body affected and the manner in which your illness and/or injury manifests itself.
- 24. Please state whether you have been given any physical examination of any kind since the occurrence alleged in your complaint and if so, state when and where you were physically examined, the name and address of the doctor or examiner and the result of such examination.

- 25. (a) If you were given or received any physical examination, pre-employment or otherwise, since the date of the occurrence alleged in your complaint, state whether you informed the doctor or examiner about the illness and/or injury alleged in your complaint.
- (b) If you told the doctor or examiner that you are still suffering pain or disability as a result of the occurrence alleged in your complaint, set forth what was said by you and what was said by the doctor or examiner.
- 26. If you have had any accidents, injuries, illnesses, diseases or operations prior to or since the
 occurrence described in your complaint, please state the
 nature of each, how you sustained the same and the names
 and addresses of all physicians, surgeons, or other
 persons who have examined you or rendered services to
 you for said accidents, injuries, illnesses, diseases
 or operations and the names, and addresses of the hospitals at which you received treatment and the date
 you were admitted, the date of each treatment and the
 date you were discharged.
- 27. Have you had or made any other claim or claims for personal injuries or illnesses against any person or corporation since the date of the incident alleged in

your complaint? If so, kindly state the date of the injury which was the basis of such claim, the nature of said injury and the name of the person against whom said claim was or could have been made.

- 28. Please state the names and addresses of all persons, firms or corporation by whom you have been employed in any capacity for a period of five years prior to your alleged illness and/or injury stated in your complaint, indicating the nature of the services rendered, and the wages, salaries or compensation received by you for said labor or services.
- 29. State whether any inspections of the area of your alleged accident, were made by you or your co-

workers prior to your accident, and if so, give all details of the inspection including names and addresses of persons involved.

DATED: New York, New York August 16, 1973

DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & GIUFFRA Attorneys for Defendant and Third Party Plaintiff 576 Fifth Avenue
New York, N. Y. 10036
BY: LAWRENCE J. MAHONEY A Member of the Firm

TO:

COMMETTE, QUENCER & ANNUNZIATO, ESQS.
Attorneys for Third Party Defendant,
UNIVERSAL TERMINAL & STEVEDORING CORP.
60 East 42nd Street
New York, New York 10017

IRVING B. BUSHLOW, ESQ. Attorney for Plaintiff 26 Court Street Brooklyn, New York 11242

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DEFENDANT'S INTERROGATORIES.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

SAME TITLE

INTERROGATORIES PROPOUNDED BY THE DEFENDANT AND THIRD PARTY PLAINTIFF TO BE ANSWERED BY THE THIRD PARTY DEFENDANT, UNIVERSAL TERMINAL & STEVEDORING CORP., IN WRITING AND UNDER OATH:

- 1. a. State whether or not Universal Terminal & Stevedoring Corp. was engaged in performing stevedoring work aboard the SS "MORMACDRACO" on January 2, 1971.
- b. If your answer to question No. la is in the affirmative, please state when the work began and when it ended.
- c. State the nature of the work being performed on January 2, 1971, by Universal Terminal & Stevedoring Corp.
- 2. State what equipment was being used by Universal Terminal & Stevedoring Corp. in the performance of said work aboard the SS "MORMACDRACO" on January 2, 1971.
- 3. a. State the names and addresses of each and every longshoreman in the gangs which was working the vessel on January 2, 1971.
- b. State the name and address of the longshoreman who was in charge of each gang.

DEFENDANT'S INTERROGATORIES

- 4. a. State whether or not an injury report was prepared with reference to this incident.
- b. If your answer to question No. 4a is in the affirmative, please state the date of such report and the name and address of the person preparing said report and the present location of the report.
- 5. State whether the third party defendant, Universal Terminal & Stevedoring Corp., obtained a statement from the plaintiff concerning the alleged accident, and if your answer is in the affirmative, specify:
- a. The date and place at which each such statement was obtained.
 - b. Identify to whom such statement was made.
- 6. State the names and addresses of all persons claimed by the third party defendant, Universal Terminal & Stevedoring Corp., to have been witnesses to the accident in question.
- 7. State whether or not any statements of witnesses were obtained by the third party defendant, Universal, and if so, specify:
- a. The name and address of the person giving the statement.
 - b. The date each statement was taken.

DEFENDANT'S INTERROGATORIES

- c. Identify the person to whom each statement was made and the present location of the statements.
- 8. a. State whether or not the area aboard the SS "MORMACDRACO" where the plaintiff alleges he was injured, was inspected prior to the time of the accident in question.
- b. State whether or not a report of such inspection was made.
- c. If a report was prepared state who made the report, when it was made, what was found and the present location of that report.
- d. In the event that an oral report was prepared, state what was found, who made such findings and to whom the findings were reported.
- 9. State whether you concede that safety and health regulations for longshoring promulgated by the United States Department of Labor serve as written instructions for safe practice. If the answer to the foregoing is in the negative, set forth in detail the basis for your reply.
- 10. On January 2, 1971, were you or your representative aware of any defects or dangerous conditions on the vessel's gangway. If so, give all details, in

DEFENDANT'S INTERROGATORIES

additions to steps taken by your employees to correct the defects and whether the defects were reported to the vessel's officers or crew members; and if so, their names and the time the reports were made.

DATED: New York, New York August 16, 1973

DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & GIUFFRA Attorneys for Defendant and Third Party Plaintiff BY: LAWRENCE J. MAHONEY A Member of the Firm Office & P. O. Address 576 Fifth Avenue New York, N. Y. 10036

TO:

COMMETTE, QUENCER & ANNUNZIATO, ESQS.
Attorneys for Third Party Defendant,
UNIVERSAL TERMINAL & STEVEDORING CORP.
Office & P. O. Address
60 East 42nd Street
New York, New York 10017

IRVING B. BUSHLOW, ESQ. Attorney for Plaintiff Office & P. O. Address 26 Court Street Brooklyn, New York 11242

THIRD PARTY DEFENDANT'S ANSWERS TO INTERROGATORIES.

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK.

SAME TITLE

Third-party Defendant, UNIVERSAL MARITIME SERVICE CORP., (sued herein as "Universal Terminal & Stevedoring Corp.") answering the interrogatories served by the defendant and third-party plaintiff herein, alleges upon information and belief:

- 1. a. Yes.
 - b. 8:00 a.m. to 4:30 p.m.
 - c. Loading cargo, #4 hatch.
- 2. Ship's gear.
- a. Gang list #4 hatch attached.
 - b. #4 hatch boss, Sal Fortunato.
- 4. a. Yes.
- b. January 2, 1971. Prepared by John Marcheone, Safety Co-ordinator. Report in possession of counsel for third party defendant.
 - 5. No.
 - a and b. Not applicable.
- 6. Anthony Misseri, 20 Carreau Avenue, Staten Island, N. Y.

THIRD PARTY DEFENDANT'S ANSWERS TO INTERROGATORIES

- 7. No written statement taken.
 - a to c. Not applicable.
- 8. a to d. Ship work area customarily inspected throughout the day by the Safety Co-ordinator and/or the ship superintendent. Third-party defendant has no knowledge of the time or times of the inspections.
 - 9. Not a proper interrogatory.
 - 10. No.

DATED: New York, N. Y. October 24, 1973

COMMETTE, QUENCER & ANNUNZIATO
Attorneys for Third-party defendant
60 East 42nd Street
New York, N. Y. 10017
682-9131

TO:

DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & GIUFFRA, ESQS., Attorneys for Defendant and Third Party Plaintiff 576 Fifth Avenue
New York, N. Y. 10036

IRVING B. BUSHLOW, ESQ., Attorney for Plaintiff 26 Court Street Brooklyn, N. Y. 11242

(Verified October 24, 1973.)

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33 36	15235	J. Fago C. Li Pomi
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40 30	74509	C. Scalafan
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UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK.

SAME TITLE

Plaintiff as and for his answers to interrogatories propounded by the defendant and third-party plaintiff, Moore McCormack Lines, Inc., are respectfully set forth as follows:

1. On or about January 2, 1971 at approximately 2:00 p. m. at the top of the gangway on the main deck, plaintiff sustained the following injuries: Injury to right knee and right ankle; edema and contusion of right ankle and right knee; severe spasm of right ankle per-patella; bursitis of right knee; spasm of lateral ligament of right ankle; spasm of thigh muscles; tear of lateral ligaments of right ankle; symovitis, poplitael outpouching; scarring over the lower aspect of the patella region; crepitus on flexion extension of knee; atrophy on lower thigh; swelling of right ankle and right knee; all the above injuries necessitated the use of crutches and an Ace bandage; in addition plaintiff suffered pain, discomfort, restriction and limitation of motion of the said parts. That said injuries directly affected the skin, bones, tendons, muscles,

capillaries and other soft tissue in and about the site of said injuries, caused and in the future will cause pain at the site of said injuries and radiating sympathetic pains to other parts of the body. That based upon reasonable medical certainty the injuries and their effects are permanent in nature.

- 2. See Item 1 above.
- 3. See Item 1 above.
- 4. On or about September 14, 1967 plaintiff sustained an injury to 1's right knee together with other parts of the body not concerned with any injuries in this matter. There was a complete recovery of this injury to the right knee and after about four weeks or so there were no residual effects and claimant was able to return to his usual duties and occupation until the date of the immediate accident.
 - 5. Dr. Bauer,

Dr. John Mollica, 410 Clinton Street, Brooklyn, New York.

Holy Family Hospital, emergency room treatment immediately following the accident.

- b) Plaintiff does not recall the dates of treatment.
- c) Plaintiff is not presently under the care of any physician.

- 6. Plaintiff was incapacitated from his usual employment from the date of the accident herein to October 11, 1971 plus two intermittent days.
- 7. Compensation paid for all medical expenses and plaintiff does not presently know their total amount.
- Approximately \$7300 from date of accident to
 October 11, 1971.
- 9. Plaintiff was physically able to return to work on October 11, 1971 but as the longshoremen were on strike he did not return to work until December 1, 1971 and has been working since.
- 10. Plaintiff has worked for various companies on the waterfront at union wages.
 - 11. Yes.
- 12. The defendant, its servants, agents and/or employees were careless, reckless and negligent in that they caused, created, maintained and/or permitted to remain and exist snow and ice to collect and remain on the gangway of its vessel thereby causing, creating, maintaining and/or permitting to exist a nuisance, trap, obstruction, hazard, menace and dangerous condition to persons legally and lawfully boarding said vessel, and, more particularly, the plaintiff herein; in failing to remove said snow and ice from said gangway; in failing

to warn plaintiff of same; in failing to provide a safe passageway for the plaintiff; in failing to provide plaintiff with a safe place to work; in failing to provide plaintiff with a seaworthy vessel; all of which the defendant, its servants, agents and/or employees knew, or in the exercise of reasonable care should have known; the defendant was otherwise careless, reckless and negligent in the premises.

- 13. Yes.
- 14. See Item 12 above.
- 15. See Item 12 above.
- 16. The condition existed for an unreasonable length of time. See Item 12 above.
- 17. Plaintiff was not working aboard defendantvessel, he was going aboard for coffee orders.
 - 18. See Item 17 above.
- 19. Loading containers; plaintiff does not know what was in the containers.
 - 20. Yes.
- 21. a) Anthony Munoz, 25 Carreau Avenue, 3.1. New York.
 - b) Plaintiff does not know.
 - c) Plaintiff does not know.
- 22. a) Plaintiff does not have any such statements and he does not know the contents of his attorney's file.

- 23. See Item 1 above.
- 24. Howard Balensweig, M. D., 667 Madison Avenue,
 New York, New York; Henry J. Magliato, M. D., 105 East
 65th Street, New York, New York; David J. Graubard, M. D.,
 38 East 85th Street, New York, New York; Michael P.
 Mulle, M. D., 27 Tall Timber Road, Middletown, New
 Jersey; August De Augustinis, M. D.; Eugene Petti,
 49 Eighth Avenue, Brooklyn, New York; John J. Mollica,
 M. D., 410 Clinton Street, Brooklyn, New York.
- b) The plaintiff was examined at the offices of the various doctors and he does not presently recall the dates of such examinations and the results of same.
 - 25. a) Yes.
 - b) Plaintiff does not recall what was said.
- 26. The only other time plaintiff recalls an injury to any part of his body injured herein was in 1967 (See Item 4). Plaintiff does not remember the name of the doctor or his address, when treated and if he was treated in a hospital.
 - 27. None for the parts of the body injured herein.
- 28. Plaintiff worked for various companies on the waterfront at union wages.

29. Plaintiff did not make any such inspection and has no knowledge of whether any of his co-workers did.

DATED: Brooklyn, New York April 24, 1974

Yours, etc.,

IRVING B. BUSHLOW Attorney for Plaintiff 26 Court Street Brooklyn, New York 11242

TO:

DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & GUIFFRA, ESOS. 576 Fifth Avenue New York, New York 10036

COMMETTE, QUENCER & ANNUNZIATO, ESQS. 60 East 42nd Street
New York, New York 10017

(Verified April 24, 1974.)

1	TRANSCRIPT OF MAY 6, 1974.
2	UNITED STATES DISTRICT COURT
3	EASTERN DISTRICT OF NEW YORK
4	x
5	CHARLES SCALAFANI, :
6	Plaintiff, :
7	-against-
8	MOORE McCORMACK LINES, INC.,
9	Defendant and : 72-C-572 Third-Party Plaintiff,
10	-against-
11	UNIVERSAL TERMINAL & STEVEDORING
12	CORP.,
13	Third-Party Defendant.:
14	X
15	United States Courthouse
16	Brooklyn, New York
17	May 6, 1974 10:00 o'clock a.m.
18	
19	Before:
20	HONORABLE MARK A. CONSTANTINO, U.S.D.J.
21	
22	
23	
24	SHELDON SILVERMAN
25	ACTING OFFICIAL COURT REPORTER

Appearances:

IRVING B. BUSHLOW, ESQ., Attorney for the Plaintiff 26 Court Street, Brooklyn, New York 11201

DOUGHERTY, RYAN MAHONEY, PELLIGRINO

& GIUFFRA, ESQS.,
Attorneys for Moore McCormack Lines, Inc.
576 Fifth Avenue
New York, New York 10036

BY: ROBERT J. GIUFFRA, ESQ., Of Counsel

COMMETTE, QUENCER & ANNUNZIATO, ESQS.,
Attorneys for Universal Terminal & Stevedoring
Corp.
60 East 42nd Street
New York, New York 10017

BY: ALBERT S. COMMETTE, ESQ., Of Counsel

23

24

25

Their ages?

Two.

1		Scalafani - direct	43
2	A	My son is seven and my daughter is three.	
3	Q	What is your occupation?	
4	A	I'm a longshoreman.	
5	Q	How long have you been a longshoreman?	
6	A	About eight years.	
7	0,q	Are you in any catagory as a longshoreman?	
8	A	Yes.	
9	0	What is that?	
10	A	Holdman.	
11	Ď	On January 2nd, 1971, were you a member of	a
12	regular gang	?	
13	A	Yes, I was.	
14	Q	Whose gang was that?	
15	· A	Sal Fortunato.	
16	Ö	Did you work at a regular pier?	
17	A	Yes, I did.	
18	Ú	What pier was that?	
19	A	23rd Street.	
20	Q	Is that in Brooklyn?	
21	A	Yes.	
22	Q	On January 2nd, 1971 do you remember what d	ay
23	of the week	that was?	
24	A	I believe it was Saturday.	
25	0	January 1st, New Year's Day was a Friday?	

Scalafani - direct 5 1 A Yes. 2 Q Had you worked on New Year's Day? 3 No. 4 0 Did you go to work on January 2nd, 1971? 5 A Yes, I did. 6 Q What pier? 7 A 23rd Street. 8 What gang? 0 9 A Fortunato's gang. 10 What was your position with the gang on that Q 11 day? 12 A I was a dockman. 13 Would you please explain to the Court the 14 difference between a dockman and a holdman? 15 A Yes. 16 A holdman works on the ship and in the hold 17 of the ship. A dockman works on the stringpiece on the 18 dock. 19 That's not on the ship at all; is that right? Q 20 A No. 21 What time did you go to work that day? Q 22 8:00 a.m.. 23 What was the condition of the weather that 24 day, was it raining, snowing, sleeting, hailing? 25

1	Scalafani - direct 6
2	A Very cold day.
3	Q Do you remember the weather on January 1st,
4	that's New Year's Day, 1971?
5	A Yes.
6	Q What was the weather on that day?
7	A It was a very cold day and it was snowing.
8	Q When you went to work at 8:00 o'clock,
9	where did you go to work at, in the hold or on the dock?
10	A On the dock.
11	Q How long did you work in the morning?
12	A From 8:00 a.m. to 12:00 noon.
13	Q At 12:00 o'clock where did you go?
14	A We went out to lunch.
15	Q What time did you come back?
16	A 1:00 o'clock.
17	Q You stated working again?
18	A Yes, I did.
19	Q Where?
20	A On the dock.
21	Q From 8:00 o'clock in the morning until 12:00
22	o'clock that afternoon, had you any occasion to go aboard
23	the vessel?
24	A No.
25	Q When you came back at 1:00 o'clock, did you go

1		Scalafani - direct	8
2	A	We were loading.	
3	Q	Do you know what kind of cargo you were load	ling
4	A	Yes.	
5	Q	What kind?	
6	A	Containers.	
7	٥	Where were they going?	
8	A	In the hatch and on top of the hatch of No.	4.
9	Q	Can you describe this vessel to us as to how	•
10	many hatches	were forward of the midship house and how ma	any
11	hatches were	aft of the midship house?	
12	λ	There were four forward hatches before the	
13	midship; the	midship; and No. 5 and No. 6 hatch on the	
14	after the	midship.	
15	0	Can you tell us how this ship was berthed	
16	at this pier	2	
17		Was the nose in or nose out?	
18	A	Nose in.	
19	Q	Was the nose closer to Third Avenue than the	8
20	Bay area?		
21	λ	Yes, it was.	
22	Q	Can you tell us what side of the ship was	
23		nst the pier?	
24	^	The starboard side.	
25	Q	The starboard side is the right-hand side of	E

Scalafani - direct

10

up the gangway in order to take the coffee order. When I reached the top there is a platform.

- Q Went up the gangway?
- A Yes.
- Q Let's go back a little.

When you went to work at 8:00 o'clock and you say you had to work on the stringpiece, is this stringpiece within the pier itself or is it on the outside of the pier, this shed?

- A It's not in the shedded area.
- Q It'e open to the elements?
- A Open to the elements, yes.
- Q When you got there that morning, would you please describe to the best of your ability what the condition wason the stringpiece where you had to go to work?
 - A There was snow and ice on the stringpiece.
 - Q Did your crew or gang do anything about that?
- A Yes, we tried to clean it as best as we could so that we could work.
- Q The area in which you were going to work, in in which you had to load the containers aboard the vessel?
 - A Yes.
- Now, you say that you walked up the gangway at around 2:00 o'clock?

You got to the top of the gangway. In order to

Q

25

1	Scalafani - direct 12
2	get on the vessel did you have to make any sort of turn?
3	A Yes.
4	Q Did you turn right or left?
5	A You have to make a slight left.
6	Q That would put you on what, what part of the
7	gangway?
8	A On the platform.
9	Q Describe this platform to the Court.
10	What material was that made of?
11	A Aluminum, steel, whatever.
12	Q Is that the same material as he steps?
13	A I would say so.
14	Q Was it attached to the steps?
15	A Yes.
16	Q Did part of this gangway go over onto the
17	vessel itself?
18	A Yes.
19	Q How wide, how long is this gangway, approxi-
20	mately?
21	A The platform was about three feet by three,
22	or three by four, something like that.
23	Q As you walked up the gangway itself, the
24	steps, did it have any rails on either side?
25	A Yes, it did.

	Jia
1	Scalafani - direct 14
2	caused him to fall
3	THE COURT: Did you see what was there?
. 4	
5	form?
6	I had noticed snow, ice and sawdust, mixed.
7	MR. COMMETTE: That's what he had noticed
8	before.
9	THE COURT: What did you see
10	MR. GIUFFRA: Objection, also.
11	THE COURT: Did you see anything at the time
12	you fell?
13	THE WITNESS: No.
14	Q When, for the first time did younotice anything
15	about the platform?
16	A After I was helped up from my injury and when I
17	got up I turned around and saw the condition of the platform.
18	O What did you see?
19	A I saw ice and snow and sawdust, mixed.
20	O Did anyone come over to help you?
21	A Yes.
22	O Without telling us what they did, what are
23	the names of the people that came over to help you?
24	A Anthony Mizzeri.
25	Q Was he a member of your gang?
23	nas he a member of your gang?

			53a	
1			Scalafani - direct	16
2	on the	deck?		
3		A	Yes.	
4		Q	After your accident?	
5		A	Yes.	
6		Q	Who else came on?	
7		A	Fellow by the name of Bianco, Bianchi	
8		Ö	Did anyone else come over?	
9		A	Mr. Pat O'Connor.	
10		Q	Who is first, who is Mr. Bianchi?	
11		A	Mr. Bianchi is a longshoreman.	
12		0	Did he work with your gang?	
13		A	No.	
14		Ŏ	Do you know where he was working?	
15		A	I believe he was working No. 5 hatch.	
16		Q	Who is Mr. O'Connor?	
17		A	Mr. O'Connor is, I believe, a supering	tendent
18	now.	I'm not	sure if he works for Moore McCormack	or
19	Univers	sal.		
20		Q	For whom did Mr. Bianchi work for?	
21		A	Bianchi's his last name.	
22		Q	Who did Mr. Bianchi work for?	
23		A	A regular gang.	
24		Q	What company?	
25		A	F or Universal.	

1	Scalafani - direct 18
2	DIRECT EXAMINATION
3	BY MR. BUSHLOW: (Cont.)
4	Q At 8:00 o'clock in the morning did longshoreme
5	go aboard the vessel?
6	A Yes.
7	Q Do you know how many?
8	A No.
9	Q At 12:00 o'clock for lunch, did they come off
10	the vessel?
11	A Yes.
12	Q Do you know how many?
13	A No, I do not.
14	O At 1:00 o'clock in the afternoon, did they
15	go back on the vessel?
16	A Yes.
17	Q Do you know how many?
18	A No.
19	Q The first time that you ever went aboard was
20	at 2;00 o'clock to get the coffee order?
21	A Yes.
22	CROSS-EXAMINATION
23	BY MR. GIUFFRA:
24	? How many gangs were working aboard the DRACO
25	on this day of your accident?

Scalafani - ctoss/Giuffra 19 1 I don't recall. A 2 At the time you were working, your gang was 3 working No. 4 hatch, did you notice whether any of the hatches were being worked that day? 5 Not that I recall, no. 6 In other words, your recollection is that only 7 your hatch is being worked that day? 8 A There might have been one other. 9 Where is that, forward or aft of where you were 0 10 working? 11 I would say aft. A 12 Aft. 13 Your gang was working the No. 4 hatch which 14 was in front of the housing? 15 A Yes. 16 This other gang was working the aft end, No. 5? Q 17 Yes. 18 Now, this gangway you mentioned before, was 19 that in place when you arrived on January 2nd, at 8:00 20 o'clock? 21 Yes, it was. 22 ? At that time, did you observe any of the 23 ship's officers or crew members in the vicinity of the 24 gangway? 25

1	Scalafani - cross/Giuffra 20
2	A No, I did not.
3	O At that time where was the gangway exactly
4	in position on the vessel?
5	Was it by the No. 5 hatch or No. 4 hatch or
6	by the housing?
7	A It was placed between the midhouse of the
8	ship.
9	Q In other words you are talking about the
10	housing, in other words, in the midhouse?
11	A Yes.
12	Q This platform you mentioned before, was that
13	exposed to the elements or was it covered on a covered area
14	of the ship?
15	A Half was covered and half was exposed.
16	Q What half was exposed?
17	A The half that was exposed was the top of the
18	platform, as soon as you step on the platform.
19	Q In other words, as you walked up the steps of
20	the gangway, you landed, or stepped onto the platform;
21	is that right?
22	A Yes.
23	O I believe you described the platform as being
24	approximately three by four?
	A Approximately

1		Scalafani - Giuffra/corss 21
2	Q	What part was exposed to the elements, the
3	forward par	et of the platform or the aft part of the platfor
4	What side?	
5	A	I would say the forward part.
6	Q	Forward part.
7	A	As you are stepping up the gangway, yes.
8	Q	In other words, you went up to the last step
9	of the gang	way?
10	A	Yes.
11	0	As you went up this last step of the gangway
12	were you ho	lding onto the railing of the gangway?
13		Yes, I was.
14	Q	Both hands?
15	A	Yes.
16	Q	The next step that you took was onto the
17	platform?	
18	A	Yes.
19	Q	Was that with the right foot or the left foot?
20	A	I don't recall.
21	Q	These railings you mentioned, these railings,
22	did they ext	end onto the datform?
23	A	Yes.
24	Q	How far a distance did they extend onto the
5	platform?	

'		Scararant - Closs/Gluilla 22
2	A	I would say about a foot, a foot and a half.
3	Q	A foot.
4		So in other words, using your description
5	of the platfo	orm as three by four, the four, is that the
6	width of the	platform or is that the length of the platform?
7	A	That would be the length of the platform.
8	Q	As you went on, what part of the platform was
9	exposed, abou	at a foot of it?
10	A	Excuse me, could you repeat that, please?
11	Q	Well, you indicated the platform is about four
12	feet long.	
13	A	Approximately.
14	Q	I assume that this part of the platform is perpen-
15	dicular to the	ne gangway itself, to the steps?
16	A	Yes.
17	Q	And you had the railings going up about a foot;
18	is that corre	ect?
19	A	Yes.
20	Q	So now, what part of the platform was exposed
21	to the elemen	nts, assuming that's four feet long, you
22	mentioned?	
23	λ	Exposed to the outside area, you mean?
24	Q	Yes.
25	A	As soon as you step onthe platform, from the

1	Scalafani - cross/Giuffra	24
2	A I don't recall. Because it was all over.	
3	Q No, was it all over this three by four are	a
4	or part of it?	
5	A There were patches all over the platform.	
6	Q The whole platform was covered with snow?	
7	A Yes.	
8	When for the first time did you see the sn	ow
9	on the platform?	
10	A After my accident.	
11	Q You didn't see it beforehand?	
12	A Well, there was sawdust covering it but th	ere
13	was some snow that was visible.	
14	Q Well, when is the first time you did see i	t,
15	after the accident or before your accident?	
16	A I would say before and afterwards.	
17	Q Well, when for the first time as you we	nt
18	up the gangway, did you notice the ice and snow on all	
19	the steps?	
20	A Yes.	
21	Q You took extra precautions?	
22	A Yes.	
23	Q As you were going up this gangway how m	any
24	steps was it, eight, ten steps?	
25	A I really don't know offhand. There were m	ore

	63a
1	Scalafani - cross/Giuffra 26
2	Q This snow and ice and sawdust, you saw that
3	before your accident?
4	A Yes.
5	Q Did you take any extra precautions?
6	A Yes.
7	Q What did you do?
8	A I treid to walk the best of my ability because
9	there was no handrails.
10	Q Did you try to extend your hand back to the
11	handrails?
12	A No.
13	Q You did not?
14	A No, it was too far.
15	Q Too far back.
16	Could you have stepped off the platform where
17	the railings were right onto the desk of the vessel?
18	A No.
19	Q You had to walk this couple of feet on to
20	the middle of the platform before you could get on the deck?
21	A Yes.
22	Q After you had this accident, did you see any
23	of the ship's officers or crew members in the area?
24	A No, I did not.
25	Q At any time did you see any officers or crew

Scalafani - cross/Giuffra 27
members on the ship?
A (No response.)
Q From the time of your accient until the time
you were removed from the ship?
A No.
Q Never saw anybody?
A (No response.)
Q Did you ever report this accident to anyone
from the ship?
A Not from the ship.
Q Who did you report the accident to?
A To the timekeeper.
Q What did you tell the timekeeper?
A I told him exactly what happened.
Q Did you tell him you slipped because of the
snow and ice?
A I believe I did.
Q What was the temperature at 2:00 o'clock
in the afternoon?
A (No response.)
Q Was it warming up that day?
A I have no idea. I know it was very cold.
Q Did you see any drippings from the gangway
as you were going up?

	65a
1	Scalafani - cross/Guiffra 28
2	A No, I did not.
3	Q Did you see it on the platform?
4	A No.
5	Q At any time, eight o'clock in the morning unti
6	two o'clock in the afternoon, which was the time of your
7	accident, did you ever see anyone cleaning off the gangway
8	or the platform?
9	A No, I did not.
10	Q Never saw anyone?
11	A No.
12	Q You told, after this accident happened, you
13	reported that to the time keeper?
14	A Yes.
15	Q That's Universal's timekeeper?
16	A Yes, I believe so'
17	Q What was his name?
18	A Warren.
19	Q You told him you slipped because of the ice
20	and the snow?
21	A Yes, I believe so.
22	Q You didn't tell him that your foot turned?
23	A I told him exactly what happened, how the
24	accident occurred.
25	Q Did you sign anything, statement at that time?

4.

1			Scalafani - cross/Giuffra	29
2		A	No, I did not.	
3		Q	You weren't asked to sign anything?	
4		A	I don't believe so.	
5		Q	But you're positive that you told him then	e was
6	ice an	d snow	on the platform?	
7		A	Yes.	
8		Q	That was the cause of your accident?	
9		A	Yes.	
10		Q	Had you known Warren a number of years?	
11		A	Yes, I would say so.	
12		Q	Is he still working down at the pier?	
13		A	Yes, I believe so.	
14		Q	You find him a reliable person?	
15		A	Yes.	
16		Q	And you have had other accidents, have you	not?
17		A	Yes, I have.	
18		Q	At other times you reported the accident to	the
19	way he	repor	ted it, to him?	
20		A	If there was another timekeeper.	
21		Q	He would report it the way you told him?	
22	•	A	Yes.	
23		0	In this case you told him ice and snow on	the
24	platfo	rmf		
25		A	I believe so.	

1	Scalafani - cross/Giuffra 30
2	Q Did you tell him that?
3	A I told him how the accident occurred.
4	I must have told him that.
5	Q In other words, you're positive in your mind,
6	you told it was the ice and snow?
7	A Yes, I believe so.
8	Q After this occurrence, you spoke to a couple of
9	other longshoremen; is that correct?
10	MR. BUSHLOW: When after, the same day?
11	MR. GIUFFRA: The same dya.
12	A After the accident?
13	Q Yes.
14	A Yes.
15	Q After this accident, did you fall onto the
16	deck?
17	A Yes, I did.
18	Q Who was the first longshoreman that you
19	spoke to?
20	A Anthony Mizzeri.
21	Q Is he a regular member of your gang?
22	A No. He is not.
13	Q Does he work at that 23rd Street Terminal?
4	A Yes.
5	Q He's employed by Universal?

1	Scalafani - cross/Giuffra 31
2	A Yes.
3	MR. BUSHLOW: Now or then?
4	MR. GIUFFRA: Then.
5	THE WITNESS: Then.
6	Q Did you tell him what happened?
7	A He saw what happened.
8	Q Did you tell him what happened?
9	A Yes.
10	Q Did you tell him you slipped, fell because
11	of the ice and snow?
12	A No, I just told him I slipped off the platform.
13	Q Did you tell it was because of the ice and
14	snow?
15	A No, because I wasn't sure at the time.
16	Q When did you first start to become sure it
17	was the ice and snow?
18	A After I was helped up and I happened to turn
19	my body and looked at the platform. That's wan.
20	Q Did you meet Misseri before you made this
21	turn or after you made the turn?
22	A Just before the accident occurred, I saw him.
23	Q Just before the accident occured.
24	I don't understand that.
25	A I was on top of the platform.

1	
•	Scalfani - cross/Giuffra 32
2	Q My question to you is when did you meet
3	Mizzeri, before you made this turn to look at what happened
4	or afterwards?
5	A Before.
6	Q In other words, you made this turn and that
7	was the first time strike that question.
8	When, for the first time did you reach the
9	conclusion that you fell because of the ice and snow on
10	the platform, before you met Mizzeri or after you saw
11	Mizzeri?
12	A After I saw him.
13	Q After you saw Mizzeri?
4	A After.
15	Q At this point you looked at the platform, saw
16	the ice and snow?
17	A Yes.
18	Q How much ice and snow was on this platform?
9	Did it cover the whole platform, part of it or what?
0	A It was covered partially.
1	Q Partially?
2	A Patches.
3	Q When you say partially, can you describe the
4	platform as three by four you indicated part of it was
5	under the housing of the ship?

1	Scalafani - cross/Giuffra 3 3
2	A Yes.
3	Q Is it your testimony that the ice and snow
4	was on the whole platform?
5	A It was on the platform but some of it was
6	partially cleaned. It looked as though someone had trie
7	to clean it but there had still been
8	Q How thick was the snow and ice, do you have
9	any idea?
10	A No.
11	Q No idea.
12	A (No response.)
3	Q Was it a light covering, heavy covering or
4	what?
15	A It was hard to determine because of the saw=
6	dust that was there, also.
17	Q When you turned around, did you see any skid
8	marks on the platform?
9	A After my accident I noticed it.
0	Q Where was the skid mark located?
1	A It was, as I'm standing on the platform, it
2	was my left.
3	Q To your left?
4	A It will be toward the after end of the ship,
	toward No. 5 hatch.

1	Scalafani - cross/Giuffra 34
2	Q I thought you said before when you started
3	to make the turn, you started to go to your right; isn't
4	that correct?
5	A Yes. But I slipped on my left foot.
6	Q I see.
7	Was the skid in the area where you fell?
8	A (No response.)
9	Q Or was it back further?
10	A No, it was just prior, before I fell.
11	Q Whwere was the skid mark, was it on the back,
12	aft end of the platform?
13	A No, toward the front.
14	Q Toward the front?
15	A Yes.
16	Q In other words, where you were walking?
17	A Yes.
18	Q You see how many skid marks, one, two?
19	A One.
20	Q Just yours?
21	A Yes.
22	Q At that point you made the evaluation that
23	you fell because of the ice and snow?
4	A Yes.
- 1	O Did you ever look at this ice and con-

	72a
1	Scalafani - cross/Giuffra 35
2	my question again, how high, a couple of inches, two or
3	three inches?
4	A _t wasn't that high, no
5	Q A couple of inches?
6	A I have no idea. Maybe an inch. I don't know.
7	Q Did it indicate to you by looking at the
8	platform that someone had clearned the platform at some
9	time?
10	A It appeared that someone had tried to clean it
11	but they did not clean it thoroughly.
12	Q In the area where you slipped, fell, where the
13	skid mark was?
14	A Yes.
15	Q Now, after Mr. Mizzeri came along, who was
16	the next person you met?
17	A I believe it was Mr. Bianchi.
18	Q Bianchi. He was a longshoreman?
19	A Yes.
20	Q Have you seen either Mr. Mizzeri, Mr. Bianchi
21	since the accident?
22	A Yes, I have.
23	O Have you spoken to them today about the case?
24	A We discussed it.
25	Q When was the fire time you discussed it with
23	

1	Scalafani - cross/Giuffra 36
2	either one of these individuals?
3	A The first time I discussed it with Mr. Bianchi
4	was when I returned back to work.
5	Q When was that, in October?
6	A No, it would be the beginning of December of
7	1971.
8	Q And was Mr. Bianchi a member of your gang?
9	A No.
10	Q He's a member of another gang?
11	A Yes.
12	Q And when is the next time you saw Mr. Bianchi?-
13	A The next time I saw Mr. Bianchi was a
14	Mr. Bushlow's office.
15	Q When was that?
16	A The 29th of April.
17	Q That's a couple of days ago?
18	A Yes.
19	Q A couple of days ago?
20	A Last week.
21	Q You haven't discussed have you discussed
22	the case with him at all from December of 1971 until
23	October of 1973?
24	A (No response.)
25	O I'm serry, '74.

1	Scalafani - cross/Giuffra 37
2	A Excuse me, you said October, '74?
3	I'm sorry
4	THE COURT: What have you got in October?
5	MR. GIUFFRA: Nothing.
6	BY RM. GIUFFRA:
7	Q From the time you first spoke to Mr. Bianchi,
8	was it December of 1971?
9	A Yes.
10	Q Until you saw him on April 29th of 1974, have
11	you ever discussed the case with him?
12	A No.
13	Q This is the first time you met him on April
14	29th?
15	A Yes.
16	Q Now, is he a regular member of one of the gangs
17	assigned to 23rd Street?
18	A Yes, he is.
19	Q You see him every day?
20	A Yes, when his gang is working or when my gang
21	is working.
22	Q So the only time you spoke to him was the
23	day of the accident and last week?
24	A About the case, yes.
25	Q Have you ever testified for Mr. Bianchi in any

1	Scalafani - cross/Giuffra 38
2	cases?
3	A No.
4	Q This is the first case that he testified for
5	you?
6	A No.
7	Q When did he arrive on the scene, Mr. Bianchi?
8	A At the time of the accident?
9	Q Yes, back to January 2nd, of '71.
10	A As I was laying on the floor, after my acciden
11	Q When you say laying, were you sitting or
12	anything on chairs or what?
13	A I believe at the time Mr. Bianchi came to the
14	scene of the accident, I was sitting up.
15	Q Sitting up?
16	A Yes.
17	Q Did you discuss with him what happened, how
18	you fell?
19	A No.
20	Q Did you tell him you fell because of the ice
21	and snow and sawdust?
22	A I believe I did.
23	O You did.
24	You looked at the platform?
5	A Ves.

1	Scalafani - cross/Giuffra 39
2	Q Did he help you off the ship?
3	A No, he did not.
4	Q Did you tell your attorney, Mr. Bushlow, he
5	was on the scene?
6	A Yes.
7	Q Of the accident?
8	A Yes.
9 1	. Q You did.
0	Did you answer any interrogatories in this
1	case?
2	A Excuse me?
3	Q Any questions and answers besides the ones
4	I asked you in my office?
5	A (No response.)
6	Q You told your attorney, Mr. Bushlow, that
7	Mr. Bianchi was also the witness to the accident?
8	A Yes.
9	Q Do you know whether Mr. Bianchi saw you fall
0	or was did he arrive es the scene after the accident?
1	A I do not know is he saw me fall.
2	Q Do you know whether Mr. Mizzeri saw you fall?
3	A Yes, he did.
4	Q He did.
5	Now, when did you get that knowledge that he

1	Scalafani - cross/Giuffra 40
2	saw you fall?
3	A Because I saw him about a second before I
4	fell.
5	Q In other words, you saw did you talk to him
6	before you fell?
7	A No.
8	Q Were you racing up the gangway by any chance?
9	A No.
10	Q Taking your time?
11	A Taking my time.
12	Q Did you ever discuss this case with
3	Mr. Mizzeri from the date of January 2nd, 1971 until the
4	present time?
15	A No.
16	Ω Have you ever testified for Mr. Mizzeri?
17	A No, I've never.
18	Q Did you meet him last week at Mr. Bushlow's
19	office?
0	A Yes, I did.
21	Q So you haven't discussed this case with him
2	since it happened on January 2nd, 1971 until April 29th,
3	1974?
4	A Right.
5	O When you went to get off the ship, where did

		78a
1	. 1	Scalafani - cross/Giuffra 41
2	you go?	
3	A	(No response.)
4	Q	Did you go to the hospital?
5	A	Yes.
6	Q	When you arrived at the hospital, did you tell
7	the doct	or of how your accident happened?
8	A	Yes, I did.
9	Q	Did you tell him it was ice and snow, grease
10	on the pi	latform?
11	A	I believe so.
12	Q	I'm sorry. Strike it out.
13		Did you tell the doctor that it was ice and
14	snow on	the top of the platform?
15	A	I believe so, I think that was one of the
16	questions	
17	0	You told him that?
18	A	I believe so, yes.
19	Q	What hospital did you go to?'
20	A	Holy Family Hospital. Holy Family Hospital.
21		MR. GIUFFRA: Your Honor, I have a copy of
22	th	ne hospital record. I would like to mark it in
23	er	vidence. I don't have the the certified copy.
24		THE COURT: As to what? History? Statements?
25		MR. GIUFFRA: There's a statement, history in
THE RESERVE OF THE PERSON NAMED IN		

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1	Scalafani - cross/Giuffra 42
2	the report.
3	MR. BUSHLOW: No objection.
4	THE COURT: No objection, very well.
5	MR. BUSHLOW: Clip it together wo it will be
6	one exhibit.
7	THE CLERK: Hospital records marked in evidence
8	as Defendant's Exhibit A.
9	(So marked.)
10	(Said exhibit handed to the Court.)
11	BY MR. GIUFFRA:
12	Q When you arrived at the hospital, Holy Family,
13	you told them you slipped and fell because of the presence
14	of snow and ice?
15	A Yes, I believe so.
16	Q This is not your first admission to Holy
17	Family Hospital: is it?
18	A (No response.)
19	Q You've been there before?
20	A I believe I was there, yes.
21	Q You find them reliable in making up
22	MR. MUSHLOW: Objection.
23	THE COURT: Sustained.
24	Q Prior to the commencement of work on January
5	2nd, did you observe anyone from Universal inspecting the

1	Sanlasa
2	Scalafani - cross/Giuffra 43
2	gangway to include the platform?
3	A No, I didn't.
4	Q Do you know based on your own knowledge
5	working on the pier whether Universal employs anyone to
6	make inspections?
7	MR. BUSHLOW: I object to that, your Honor. I
8	don't think it's within his province; immaterial.
9	MR. GIUFFRA: He's been a longshoreman about
10	eight years.
11	I think he would testify as to dustom and
12	practice
13	THE COURT: He's not here for that purpose,
4	not within his province.
15	Q When you met Mr. O'Connor, how long did it
16	take him to arrive at the scene?
17	A I would say about five minutes after the
18	accident.
19	Q And did you tell Mr. O'Connor that you
20	slipped and fell because of the ice and snow?
11	Yes, I believe I did.
2	Q Did you point out the area where you fell?
3	A Yes.
4	Q Did he make any inspections at that time?
5	A Any inspections?

	8la
1	Scalafani - cross/Giuffra 44
2	Q Yes.
3	A I believe he did.
4	Q He looked at the platform?
5	A Yes.
6	Q From the time how long did ittake you to
7	get off the vessel from the time your accident happened?
8	A From the time of the accident?
9	Q Right.
10	A I would say a good fifteen minutes.
11	Q A good fifteen minutes.
12	During that interval did obscrve or see
13	anyone clean off the platform or the gangward
14	A No, I did not.
15	Q As you were going up the gangway, was there
16	ice and snow on all the steps?
17	A Yes.
18	Q It covered the entire width and length of the
19	step?
20	A No. not the entire.
21	Q What portion of each of the steps was there
22	ice or snow on?
23	MR. BUSHLOW: Your HOnor, I object to this.
24	There are about twenty steps. He's going to
25	ask him, one, two, three or four or five?

1		024
		Scalafani - cross/Giuffra 45
2	Q	Generally, were they all covered with ice
3	and snow?	
4	A	The entire step was not covered entirely.
5	It was covered	
6	0	Covered in patches?
7	A	YEs.
8		
9	Q	Would that indicate to you that someone had
	cleaned the ste	eps?
10	A	Had tried to clean the steps or from the men
11	walking up and	down on the gangway.
12	Q	Yes.
13		Was there more snow and ice on the steps
14	than on the pla	atform?
15	A	(No response.)
16	o	From your observations?
17	A	I don't recall.
18	0	You don't know.
19		MR. GIUFFRA: No further questions at this
20	time.	
21	6	THE COURT: Any questions?
22	CROSS-EXAMINATI	IOM .
23	BY MR. COMMETT	?:
24,	0	now long had you been a longshoreman before
25	the date of thi	ls accident?

1			Scalafani -cross/Commette 46
2		A	Excuse me?
3		Q	How long had you been a longshoreman before
4	the dat	e of th	is accident?
5		A	About five years.
6		Q	How long had you worked in this gang?
7		A	About five years.
8		Q	The members of the gang, this was Fortunato's
9	gang?		
10		A	Yes.
11		Q	Were they the same members during those
12	five ye	ars, ge	nerally?
13		A	Some were different.
14		0	The two men that came over on the desk after
15	you had	your a	ccident, were they members of the gang which you
16	had known for five years?		
17	•	A	They were not members of my gang.
18		Q	Had you known them as members of the other
19	gang?		
20		A	Yes.
21		Q	For five years?
22	ò	A	Approximately, Yes.
23		Q	Do you know if the vessel was worked on
24	January	1st?	
15		A	I don't think so.

	84a
1	Scalafani - cross/Commette 47
2	Q You hadn't worked on January 1st?
3	No.
4	O That was the holiday?
5	A Yes.
6	Q New Year's Day?
7	A Yes.
8	Q You said sometime during that day there had
9	been snow; is that correct?
10	A Yes.
11	Q Was it early in the day?
12	A It started early in the day.
13	Q Did it stop before noon that day?
14	A No, I don't believe so.
15	O or don't you remember?
16	A I don't think so, no.
17	Q When you went to work on the morning of
18	January 2nd, it wasn't snowing then, was it?
19	A No, it was not.
20	Q It was a clear cold day, was it not?
21	A I would say it wasn't clear cold, hazy day.
22	Q Snow on the streets?
23	A Yes, there was.
24	O Snow on the dock?
25	A Yes, there was.

	85a
1	Scalfani - cross/Commette 48
2	When you started to work about 8:00 o'clock on
3	the stringpiece; is that correct?
4	A Yes.
5	Q The stringpiece is an outside dock area, outside
6	the ship; is that correct?
7	A Yes.
8	Ω And next to the vessel?
9	A Yes.
10	Q Also, other gangs working that morning?
11	A Yes.
12	THE COURT. I think we better stop for
13	lunch. Resume about 2:15.
14	(Luncheon recess: 1:00 o'clock p.m.)
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	

Scalafani - cross

49 .

AFTERNOON SESSION

THE COURT: What was the temperature

at the time the accident happened?

MR. COMMETTE: 34°.

(Recess.)

(All parties moved to chambers: case adjourned in chambers until Thursday, May 9, 1974.)

* * * :

EXAMINATION BEFORE TRIAL OF DEFENDANT.

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

X

CHARLES SCALAFANI,

Plaintiff,

-against -

MOORE McCORMACK LINES, INC., "MORMACDRAGO" D/A 1/2/71,

Defendant and Third Party Plaintiff,

-against-

UNIVERSAL TERMINAL & STEVEDORING CORP.,

Third Party Defendant.

January 15, 1974 2:30 P.M.

576 Fifth Avenue New York, New York

DEPOSITION of Defendant and Third Party Plaintiff, by GERALD GORDON, taken by Defendant and Third Party Plaintiff pursuant to notice dated January 9, 1974.



Apex
Reporting Company
45 JOHN SYREET
NEW YORK, N. Y. 10038
233-3530

2 APPEARANCES:

3 IRVING B. BUSHLOW, Esq. Attorney for Plaintiff 4 26 Court Street Brooklyn, New York (NOT PRESENT)

6 DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & GIUFFRA Esqs. Attorneys for Defendant & 3rd Party Plaintiff 7

576 Fifth Avenue New York, New York

ROBERT J. GIUFFRA, Esq., of Counsel BY:

9 COMMETTIR, QUENCER & ANNUNZIATO, Esqs. Attorneys for Third Party Defendant 10

60 East 42nd Street New York, New York

11 BY: EMIL R. ANNUNZIATO, Esq., of Counsel

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IT IS HEREBY STIPULATED AND AGREED,

15 by and between the attorneys for the respect-16 tive parties hereto, that all rights provided by the Rules of the FRCP, including the right to object to any question, except as to the form, or to move to strike any testimony at this examination, are reserved, and, in addition, the failure to object to any question, or to move to strike testimony at this examination, shall not be a bar or waiver to make such motion at, and is reserved for, the trial of this action.

25

1	Gordon	3

IT IS FURTHER STIPULATED AND AGREED.
that this deposition may be sworn to, by
the witness being examined, before a notary
public other than the notary public before
whem this deposition was begun, but the
failure to do so, or to return the orig-
inal of this deposition to counsel, shall
not be deemed a waiver of the rights pro-
wided by the Rules of the FRCP, and shall
be controlled thereby.

IT IS FURTHER STIPULATED AND AGREED, that the signing, filing and certification of the original of this deposition is waived.

IT IS FURTHER STIPULATED AND AGREED,
that counsel for the defendant and third
party plaintiff shall furnish to counsel
a copy of this deposition without charge.

GERALD GORDON, having first been duly sworn before a notary public of the State of New York, hereby testified as follows:

1	Gordon
2	MR. GIUFFRA: Let the record reflec
3	that a notice to take the deposition of M
4	Gordon was served on January 9th, 1974.
5	The netice was returnable on January 15th
6	1974 at 2:30 P.M. in the offices of the
7	attorneys for the defendant and third
8	party plaintiff, Moore-McCormack Lines.
9	At about 2:25 I called the attorney
10	for the plaintiff, Irving B. Bushlow, and
11	spoke to a Marie DeLuca, who acknowledged
12	the receipt of the notice and advised us
13	that they would not attend at the taking
14	of Mr. Gordon's testimony.
15	I informed Mrs. DeLuca that Mrs.
16	Gordon was expected to sail, and that he
17	was a witness on behalf of the defendant
18	and third party plaintiff. She then
19	stated that they would not attend the
20	deposition.
21	
	EXAMINATION BY MR. GIUFFRA:
22	Q May I have your full name for the
	record, please?
24	A Gerald Gordon.
25	O Your home address ?

1		Gordon 5
2	٨	51 Bellcrest Avenue, East Northport,
3	New York.	
4	Q	What is your present occupation?
5	A	A merchant sailor. Officer, I should
6	say.	
7	Q	Can you tell us, briefly, about your
8	educational h	eckground?
9	A	I went to a four year college at New
10	York State Ma	aritime Academy, in the Bronx.
11	Q	When did you graduate?
12	٨	1961, June.
13	Q	Since that time, what have you been
14	doing?	
15	A	I have been sailing on and off.
16	Q	What type of license do you hold at
17	the present t	time?
18	A	Second mate.
19	Q	When was that issued?
20	A	1964.
21	Q	Is that still in effect?
22	A	Yes.
23	Q	Can you describe for us, briefly, what
24	you do as sec	cond mate aboard American merchant vessels?
25	A	Second mate is in charge of, well,

1	Gordon 6
2	number one, he is a watch standing officer. He is
3	in charge of the navigation or in charge of the
4	navigation of this ship, safe conduct of the ship
5	at sea, and in port should be supervising cargo
6	operations on his watch.
7	Q Does he also have responsibility,
8	while the vessel was in port, concerning the equip-
9	ment on board, including gangways?
10	A When he is on watch he is responsible
11	for the ship.
12	Q That includes the condition of the
13	dock and the gangways?
14	A Yes.
15	Q Do you recall the time that you
16	served aboard the MORMACDRAGO in 1971?
17	A I do now.
18	Q What was your responsibility aboard
19	that vessel?
20	A I was the night port relief officer.
21	Q Can you describe for us, briefly,
22	what does that mean?
23	A Well, he assumes, he relieves the ship
24	the regular ship's officer, and takes on the duties
25	that normally the regular ship's officer would do.

1	Gordon 7
2	That again would be, in port, making sure the vessel
3	is safe at all times and supervising the cargo activ
4	ities. If there is any kind of emergency, he is
5	there to take care of them.
6	Q That was your responsibility while
7	you were aboard the MORMACDRAGO in January of 1971?
8	A Yes.
9	Q I would like to show you the log book
0	for the MORMACDRAGO for January 1, 1971. Can you
1	tell me whether your signature appears in that log
2	book?
3	A It does.
4	Q At what hour does it appear?
5	A At 1200 and at 1600.
6	Q From looking at the log book can you
7	tell us what hours you were employed aboard the
8	vessel as a relief mate?
9	A From 0800 to 1600.
0	Q During that period of time do you re-
1	call whether it was snowing? You can look at the
2	leg book.
3	A The log book shows that it was heavy
4	snow on that watch.
5	Q Do you have any independent recallegate

1	Gordon
2	whether it was snowing that day?
3	A I can recall that the was snew, yes
4	Q During the period when you were on
5	duty from 8:00 in the morning until 1600 hours, do
6	you recall whether there was anyone aboard the
7	vessel cleaning the snow?
8	A According to the log book, on January
9	I there was no one from the shore, any shore gang
10	aboard, cleaning the ship Wait, excuse me. 1300
11	shore gang on board.
12	Q Is that entry of 1300 hours, is that
13	in your handwriting?
14	A Yes.
15	Q What does that indicate?
16	A That someone from the shore came a-
17	board, a gang, some men. I don't know exactly the
18	number of them, that their sole purpose was to
19	clean the ship, the gangway, any on deck area
20	where people would walk, to keep it clean of snow.
21	Q Was there any cargo activity being
22	carried out on January 1st, 1971?
23	A No cargo activity.
24	Q After the shore gang completed their
25	classing operation did you have an engerturity to

1	Gordon
2	examine or inspect the vessel's gangway?
3	A To the best of my recollection, I
4	would take a turn at least once an hour around the
5	deck to make sure everything was clear or safe.
6	Q And your recollection would be by th
7	time you left at 4:00 o'clock the gangway was safe
8	A Yes.
9	Q what would that indicate to you?
10	A That it was clear of all snow. It
1	probably had sand put down or sawdust or something
12	on it, and that the area between the gangway and
13	usually where you walk inside the house is clear o
4	snow.
15	Q Where was the gangway located on thi
16	ship on this date, January 1st?
7	A What do you mean by that?
8	Q Was it port side, sterboard side?
9	A It would have to be. The ship was
0	starboard side to so it would be on the starboard
1	side.
2	Q Do you recall between what hatches
3	or where
4	A (Interrupting) The gangway is, I
5	halfave by the forward and of the house

1		Gordon 10
2	Q	Could you describe the gangway for us,
3	your recollec	tion of it?
4	A	It is a normal gangway, as far as I
5	know.	
6	Q	Did it have a platform at the top of
7	the gangway?	
8	A	Yes. There would have been a platform,
9	a round platf	orm, and then you would step down off
10	the gangway o	nto the ship.
11	Q	Onto the deck?
12	A	Yes.
13	Q	From looking at your entry and from
14	your own reco	llection, do you recall whether that
15	platform in t	the gangway was clear of snow by the
16	time you left	: at 1600 hours?
17	, .	The best well, let's see now. At
18	1600 hours I	have in the log book moderate snow,
19	meaning it wa	s still snowing at the time, so it was
20	as clear as p	combly it could be clear.
21	Q	Did you return on board the vessel
22	on the follow	ring day?
23	A	Yes.
24	Q	What time did you come aboard the
25	vessel at the	at time on January 2nd?

1		Gordon	11
2	A	0800.	
3	Q	Is there an entry that appear	s again
4	at 0800 until	1600 hours on the 2nd?	
5	Α	Yes.	
6	Q	Do you have any independent r	ecollec-
7	tion of condu	cting any inspection of that g	angway?
8	A	When I came aboard the ship I	normal-
9	ly make an in	spection of the ship, the line	s, the
10	gangway, just	make a complete turn around t	he ship
11	right away.		
12	Q	Is it your recollection that	the gang
13	way itself and	d the platform we talked about	earlier
14	that it was c	lear of snow and ice?	
15	A	As far as I can recall, it wa	s clear.
16	Q	Again your signature appears	in the
17	log book for	January 2nd.	
18	A	Right.	
19	Q	That was your responsibility	25 E
20	relief mate to	make these entries in the lo	g book?
21	A	Yes.	
22	Q ·	For January 1st and January 2	nd?
23	A	Right.	
24		MR. GIUFFRA: Please mark the	se two
25	ne cas	Marmac's Frhibits 1 and 2	

1		Gordon	12
2		(Whereupon, the above mentioned	
3	docume	ents were so marked as Defendant,	
4	Moore	-McCormack's Exhibits 1 and 2 for	
5	Ident	ification, of this date.)	
6	Q	As part of your duties, you are re-	
7	quired to mai	ce entries into the log book, is that	
8	correct?		
9		Yes.	
10	Q	And this document is kept in the bus	11-
11	ness of the	ship itself?	
12	* A	Correct.	
13	Q	You are required to maintain it?	
14	A	Correct.	
15	Q	Besides making entries concerning ye	ouz
16	inspection,	if there was an accident aboard the ve) 8 -
17	sel would the	it be required to be reported into the	,
18	vessel's log	book?	
19	A	Yes, it would.	
20	Q	Looking at the log book for January	
21	2nd, is there	an entry by an indication that during	ng
22	the hours the	at you were employed that any injury	
23	was reported	to you?	
24	A	No, there isn't any.	
25	Q	When you boarded the vessel at 0800,	

1	Gordon 1:
2	8:00 o'clock in the morning on January 2nd, were
3	longshoremen working at that time?
4	A No. They were just coming abourd.
5	They started working at 8:00 o'clock.
6	Q Do you have any recollection of how
7	many, looking at the log book which has been marked
8	as Defendant, Hormac's Exhibit 2, how many gangs of
9	longshoremen were aboard on January 2nd?
10	A I logged three gangs aboard at 0800.
11	Q How many?
12	A Three.
13	Q Were there any other gangways on that
14	vessel for access to the vessel on January 2nd, or
15	was it still the same story?
16	A No gangway. It should only be one
17	gangway, as far as I know.
8	Q The gangway that you boarded or used
9	on January 1st, that is the same gangway you used
20	on January 2nd?
1	A Right.
2	Q During the morning hours from 0800
3	till noontime, how many tours would you make of the
4	deck itself?
5	A I had been on deck for the whole time

		100a
1		Gordon 14
2	while they're	working cargo.
3	Q	During that time would you have occa-
4	sion to work	by the vessel's gangway?
5		Definitely.
6	Q	Do you have any recollection of seeing
7	any snow or 1	ce on the gangway itself?
8	A	No, I don't. Not at this time.
9	Q	In other words, your recollection is
0	that you saw	no snow or ice?
1	A	Right.
2	Q	Does the log book indicate when it
3	stopped snowi	ng?
4	À	SN is snow, and it was still snowing
5	at 1600. And	I don't see anything for 2400 in there
6	Q	So based on your experience, the
7	likelihood is	that it stopped snewing around 1600
8	hours on Janua	ary lat?
9		No, it was still snowing. Moderate
0	snow at 1600.	And there is no indication here when
1	it stopped, a	Ithough at midnight they showed cloudy.
2	So somewhere	between 1600 and 2400, midnight, it
3	stopped.	

What about the following day, January

2nd? 25

24

Q

1		Gordon	15
2	A	No snow at all.	
3	Q	When you hearded the vessel as	ain,
4	you say you c	onducted your inspection of the	gangway
5	A	Yes.	
6	Q	What die that inspection consi	st of?
7	A	Well, I, you look for any snow	, ice,
8	any possible	debris on the gangway or oil, g	Tease,
9	where somebod	y might get hurt or slip.	
10	Q	Your recollection is that ther	0 VES
11	no grease or	oil or ice or snow on the gangw	ay,
12	including the	platform on the top, when you	boarded
13	the vessel on	January 2nd at 8:00 o'clock?	
14	A	I can't honestly say. There m	ight
15	have been. N	e are talking about one piece of	f ice,
16	a lot of snow	. The gangway was clear enough	so I
17	didn't feel i	t was unsafe.	
18	Q	And that condition existed at	12:00,
19	1:00 e'clock	in the afternoon also?	
20	A	Right.	
21	Q	Do you recall whether the log	book
22	reflects any	entry made by you as to what th	e out-
23	side temperat	ure was in the morning hours?	
24	A .	On the	
	•	A+ 0800 house?	

1		Gordon 16
2	. A	0800, that was the other fellow.
3	That was 28 d	egrees, the previous watch.
4	Q	What watch?
5	A	0800.
6	Q	What is the next logging?
7	A	1200, it was 35 degrees.
8		MR. GIUFFRA: Off the record.
9		(Off the record discussion.)
10	Q	Are you familiar with this signature?
11	A	I don't know the man.
12		MR. GIUFFRA: Off the record.
13		(Off the record discussion.)
14	Q	Is there any entry in the log book
15	which has bee	n marked as Defendant's Exhibit 2,
16	concerning th	s inspection of the gangway at 0800
17	hours other t	han in your handwriting?
18	A	The port relief officer who I relieved
19	at 8:00 o'clo	ck, 0800, logged, it is clear line and
20	gangway check	ed frequently.
21	Q	Based on your experience as a mariner,
22	that would in	dicate the gangway was clear of snow,
23	ice and other	dangerous conditions?
24		Correct.
25	Q	Did you receive any complaint during

1	Gordon 1:
2	the time you were on board from 8:00 o'clock in the
3	morning to 4:00 o'clock in the afternoon concerning
4	the condition of the gangway?
5	A Not to my knowledge.
6	Q And platform?
7	A But if there was a complaint it would
8	have been taken care of.
9	Q If there was a complaint it would have
10	been logged in the log book?
11	A No, not a complaint. I would take
12	care of it.
13	Q That is your practice, that if there
14	was a complaint concerning the condition of the
15	gangery, whatever the reason might be, it would be
16	taken care of?
17	A I would take care of it if there was
8	no unlicensed gangwayman there.
9	MR. GIUPFRA: I have no further
20	questions.
21	MR. ANNUNZIATO: I have a couple.
2	EXAMINATION BY MR. ANNUNZIATO:
3	Q Mr. Gordon, you testified that on
4	January 1st, according to the log book, the was
.5	A shore sens cleaning the enew from the shirt

1	Gordon 18
2	A Correct.
3	Q Do you know or could you identify that
4	
5	shore gang, as far as the employer? A No.
6	
7	Q Do you know whether they were long-
8	shoremen?
	A No.
9	MR. ANNUNZILTO: Mr. Giuffra, you
10	don't know?
11	MR. GIUFFRA: No.
12	MR. ANNUNZIATO: I have no further
13	questions.
14	
15	MR. GIUFFRA: No questions.
	(Time noted: 3:00 o'clock P.M.)
16	
17	• • •
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19	EXHIBITS
20	Defendant, For
21	Messe-McCormack's Description Iden.
22	1 and 2 Log book entries for
23	January 1st and 2nd, 1971. 12
22,	
25	

or.

1	Gordon 1
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3	CERTIFICATE
4	STATE OF NEW YORK) : SS.:
5	COUNTY OF NEW YORK)
6	I, WILLIAM KAPLAN, a shorthand re-
7	porter and a notary public within and for the Stat
8	of New York, do hereby certify:
9	That GERALD GORDON, the witness ap-
10	pearing on behalf of the defendant and third party
11	plaintiff herein, whose deposition is hereinbefore
12	set forth, was duly sworn by me, and that such
13	deposition is a true record of the testimony given
14	by such witness.
15	And I further certify that I am not
16	related to any of the parties to this action by
17	blood or marriage, and that I am in no way inter-
18	ested in the outcome of this matter.
19	IN WITNESS WHEREOF, I have hereunto
20	set my hand this 29 day of January, 1974.
21	
22	Athr &c
23	
24	
25	

1	TRANSCRIPT OF SEPTEMBER 24, 1974
2	UNITED STATES DISTRICT COURT
3	EASTERN DISTRICT OF NEW YORK
4	x
5	CHARLES SCALAFANI, :
6	-vs- : 72 C 572
7	MOORE MC CORMACK LINES, INC., : etc.,
8	-vs-
9	UNIVERSAL TERMINAL AND STEVE-
10	DORING CORP.,
11	Third Party Defendant. :
12	
12	
13	United States Courthouse Brooklyn, New York
13	Brooklyn, New York September 24, 1974
13 14	Brooklyn, New York September 24, 1974
13 14 15	Brooklyn, New York September 24, 1974 12:15 O'clock P.M.
13 14 15 16	Brooklyn, New York September 24, 1974 12:15 O'clock P.M. BEFORE:
13 14 15 16 17	Brooklyn, New York September 24, 1974 12:15 O'clock P.M. BEFORE:
13 14 15 16 17 18	Brooklyn, New York September 24, 1974 12:15 O'clock P.M. BEFORE:
13 14 15 16 17 18 19	Brooklyn, New York September 24, 1974 12:15 O'clock P.M. BEFORE:
13 14 15 16 17 18 19 20	Brooklyn, New York September 24, 1974 12:15 O'clock P.M. B E P O R E: HONORABLE MARK COSTANTINO, U.S.D.J.
13 14 15 16 17 18 19 20 21	Brooklyn, New York September 24, 1974 12:15 O'clock P.M. BEFORE:

APPEARANCES:

IRVING B. BUSHLOW, ESQ., Attorney for Plaintiff Scalafani

MESSRS.DOUGHERTY, RYAN, MAHONEY, PELLEGRINO and GIUFFRA Attorneys for Moore McCormack

BY: ROBERT J. GIUFFRA, ESQ., Of Counsel.

MESSRS. BROWN, QUENCER & COMMETTEE, *
Attorneys for Universal Terminal and
Stevedoring Corp.

BY: ALBERT J. COMMETTEE, ESQ., Of Joursel.

^{*} The correct spelling throughout this Transcript should be "Commette."

 MR. GIUFFRA: Your Honor, we have a stipulation between counsel.

MR. BUSHLOW: Well, may I explain the situation.

Your Honor, the witness they wanted to call is ill, and someone else they wanted to call is not here.

So we spoke about it in the hall, and with certain stipulations, we have agreed to enter into a certain stipulation.

THE COURT: All right.

MR. COMMETTEE: I was the gentleman who spoke with Patrick O'Connor, who would have been the witness called by the vessel as the next witness.

But since I spoke to him over the phone, I wanted to see if he could come to court. He was ill and he suggested that a deposition be taken at his home this week. But rather than do that, Mr. Bushlow and I agreed on a statement that would comprise the gist of his testimony.

THE COURT: All right.

MR. COMMETTEE: I wrote down after speaking with Mr. O'Connor on the phone, the --

MR. BUSHLOW: First, may we identify who he is?

•

MR. COMMETTEE: Patrick O'Connor, a superintendent for Universal Stevedoring Company, if called as a witness would testify as follows:

That on the afternoon of January 2, 1971, he saw the plaintiff sitting on the deck.

When asked what had happened, plaintiff stated that he had slipped and fallen.

The deck was clean. The gangway and platform may have had some patches of snow, with sawdust thereon. No condition, in his opinion, which should have been corrected. If a dangerous condition of the gangway or platform had been observed, he would have reported the same to the Chief Officer.

No such complaint was made.

THE COURT: All right. Without conceding the truth of it.

MR. BUSHLOW: Without conceding the truth, of course.

THE COURT: Of course.

NR. COMMETTEE: Do I need to mark it? I read it word for word.

THE COURT: No, it's in the record. Stipulate and agreed by and between the attorneys and the respective parties.

MR. GIUPPRA: The next suipulation would be that if Mr. Shulman --

MR. BUSHLOW: Will you identify him?

MR. GIUFFRA: Mr. Shulman would have testified—
Mr. Shulman is an investigator and he was engaged
by Universal. And in his office, a Howard Blum, who
is now sick. He is dying of concer. He would have
identified Mr. Blum's signature on the report. And
we would like — and he also would have testified that
this report and statement was made in the regular
course of his business.

I would like to have the statement and the report --

MR. BUSHLOW: And he would have also testified that he had no independent knowledge of whether Mr. Blum ever interviewed this gentleman, where or when. But that that is his signature.

THE COURT: That would be his signature.

MR. GIUFFRA: This is his report. THE COURT: All right.

MR. COMMETTEE: That is with reference to the statement which was exhibited --

THE COURT: The statement to which Mr. Misseri was questioned about.

MR. BUSHLOW: Was what?

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THE COURT: Was questioned about.

MR. BUSHLOW: That he never spoke to him.

THE COURT: All right.

MR. GIUFFRA: And also his report of investigation. You want to mark that?

MR. BUSHLOW: No.

MR. GIUFFRA: Are we only agreeing to the statements?

THE COURT: Only agreeing that if he were here, he would identify it. He denies it. Unless you can show some other facts.

MR. BUSHLOW: All right. Your Honor --

THE COURT: Is that it?

MR. GIUFFRA: Now, your Honor, is this in evidence or not in evidence?

MR. BUSHLOW: No.

MR. GIUPPRA: I thought --

THE COURT: The statement was a report made -a statement upon which Mr. Misseri was questioned, and that if Mr. Shulman were called, he would say that this statement was made inthe regular course of business, and that the signature thereon, is that of Mr. Glum, of who he is familiar -- with whom he is familiar, without conceding any of the facts or statements made therein.

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That's all.

MR. COMMETTEE: Mr. Bushlow's statement is that he himself had no personal knowledge of an interview or whether such an interview --

THE COURT: And also if Mr. Misseri likewise.

MR. COMMETTEE: May we offer that statement in evidence, which has been marked for identification?

MR. BUSHLOW: No. All that we are proving here is that that is Mr. Blum's signature. If he want to offer his second signature in evidence, not the statement or the facts contained --

> THE COURT: In any event, you did question him? MR. COMMETTEE: Yes.

MR. BUSHLOW: Which is in evidence.

THE COURT: Those questions would be in evidence.

MR. COMMETTEE: Your Honor rules that this is inadmissible?

THE COURT: I feel it's inadmissible at this point to show any inconsistency, number one, or to show --

MR. BUSHLOW: A prior contradictory statement.

THE COURT: Or to show that he fabricated the statement subsequent to that.

It serves no real purpose. In other words, it does serve a purpose as to whether or not he is telling

the truth, or whether or not he spoke to anyone prior to coming to court.

MR. COMMETTEE: All right.

THE COURT: All right, we understand that.

MR. BUSHLOW: The defendants rest?

MR. GIUFFRA: The defendant makes the usual motions to dismiss the cause of action.

THE COURT: The Court reserves decision at this time.

MR. COMMETTEE: And the third party defendant would move to --

THE COURT: I will reserve decision.

MR. COMMETTEE: We would join in the motion made by counsel to dismiss the complaint on the grounds that there is no proof of an unseaworthy condition with respect to the third party complaint.

And I would move to dismiss that complaint on the ground that the third party plaintiff has failed to prove that there was any dangerous condition of which the third party defendant had notice; that the proof is clear that there was a gangway accident, and that there was no condition observed which required attention to the Chief Officer, reserving, of course, that the Court must determine whether there was or was not an unseaworthy condition. But even if there was

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an unseaworthy condition, I point out that there was no notice of that to the third party defendant, and that the vessel having through its agent, created the condition which they claim was an improper removal, that they are bound by that, and that would become sufficient to preclude indemnity.

THE COURT: All right, the Court reserves decision.

MR. BUSHLOW: Your Honor, at this time, the plaintiff moves for a directed verdist against the defendant on two grounds.

MR. COMMETTEE: Directed verdict?

MR. BUSHLOW: There's no jury.

THE COURT: Whom am I going to BIRRET??

MR. BUSHLOW: All right. Well --

THE COURT: I will reserve decision on all the motions that have been made. And the attorneys are to submit to the Court findings of fact and conclusions of law, together with their briefs.

And the Court will then make its determination.

MR. BUSHLOW: Thank you.

MR. COMMETTEE: Can we set a plan for this?

THE COURT: Why don't we have -- can you do it

now?

MR. BUSHLOW: Let's see. How about two weeks?

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THE COURT: All right. How about October 18.
That's almost a month.

MR. BUSHLOW: As soon as we get the minutes.

THE COURT: All right. October 18, all papers to the Court, including findings of fact and conclusions of law.

MR. BUSHLOW: Can we have an opportunity for reply?

THE COURT: It's up to you.

MR. BUSHLOW: What do you say?

MR. COMMETTEE: If all parties --

THE COURT: Why don't we make it -- rather than doing it that way, let's make it October 11.

MR. BUSHLOW: That is not enough time.

THE COURT: October 18. And then October 25 will be for all papers. All replies must be in by that time.

Okay.

MR. BUSHLOW: That's fine. Thank you, your Honor.

THE_COURT: All right.

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	116a		
1	TRANSCRIPT OF SEPTEMBE	R 23, 1974.	
2	UNITED STATES DISTRICT COURT		
3	EASTERN DISTRICT OF NEW YORK		
		·x	
4	CHARLES SCALAFANI,		in
5			
6	-Vs-	12 C 5/2	
7	MCORE MC CORMACK LINES, INC., etc.,	:	
8	-v s-	:	
9		:	
	UNIVERSAL TERMINAL & STEVEDORING CORP.,		
10	Third Party Defendant.		
11			
12			
13		United States Brooklyn, New	York
14		September 23, 11:30 A.M.	1974
15			
16	Before:		
17	HONORABLE MARK COST	MANTINO, U.S.D.	
18			
19			
20			
21			
	JOSEPH BARBEI OFFICIAL COURT RE		
21 22 23			

APPEARANCES:

IRVING B. BUSHLOW, * ESO., Attorney for Plaintiff.

MESSRS. DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & GIUFFRA Attorneys for Moore McCormack BY: ROBERT J. GIUFFRA, ESQ., Of Counsel.

MESSRS.BROWN, QUENCER & COMMETTEE, 60 Batt 42nd Street, New York N.Y. 10017 Attorneys for Universal Terminal

BY: ALBERT J. COMMETTEE, ESQ., Of Counsel.

* The correct spelling throughout this Transcript should be "Bushlow."

THE CLERK: Civil cause for trial, Charles Scalafani versus Moore-McCormack Lines, etc.

THE COURT: All right.

MR. COMMETTEE: Your Honor, I was cross examining, but I will suspend my cross examination for a moment, because Mr. Giuffra has one or two points that he wants to cover.

THE COURT: All right.

CHARLES SCALAFANI, called as a witness,
having been previously duly sworn, resumed
the stand and testified further as follows:
MR. GIUFFRA: Your Honor, I would ask that
the witnesses for the plaintiff be excluded from the
courtroom.

THE COURT: Yes. The witnesses are excluded.

CROSS EXAMINATION

BY MR. GIUFFRA: (Continued)

Mr. Scalafani, I would like to show you a series of photographs, six in all, and I would like you to look at them, and tell me whether they are a fair representation of the gangway on the Moor-MAC Draco on the date of your accident?

- A Excuse me. These were photographs taken that day?
 - Q No. Subsequent to that day. Is that the gangway

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MR. GIUFFRA: Can I have those photographs

that you were talking about?

I would say so.

MR. BUSHLOW: May I see them?

MR. GIUFFRA: After I show them to Mr. Bushlow

THE COURT: Yes.

marked in evidence, your Honor?

All right, give them to Mr. Bushlow.

MR. BUSHLOW: If your Honor please, if these photographs are to show the construction of the gangway, and whether there was the gangway -- that is, that the ship used ordinarily, I have no objection.

But are you claiming that this was the condition of the gangway when he had his accident or --

MR. GIUPFRA: No. That was the gangway which was used. We are not talking about the condition of the gangway.

MR. BUSHLOW: Fine. I have no objection. With the understanding, that they are limited only to the physical appearance of a gangway.

THE COURT: YES.

MR. GUIFFRA: Which was on the Moor-Mac Draco.

MR. BUSHLOW: Nothing to show that. But I guess they are all the same?

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MR. GIUFFRA: Right.

THE CLERK: Six photographs marked in evidence as Defendant's Exhibits A through P.

MR. GIUFFRA: I think we had one before.

MR. BUSHLOW: Before we do that, may I just have a little voir dire on this before they are marked into evidence?

VOIR DIRE EXAMINATION

BY MR. BUSHLOW:

Mr. Scalafani, did you look at these photographs can you tell whether this is the gangway on the Moor Mac Drago?

Mo, I cannot.

Now, is this -- are these photographs of a gangway which is perhaps similar to the one on the Moor Mac Draco?

I would say similar.

Nothing.

But whether this is the Moor Mac Draco or not, you have no way of knowing?

I have no way of knowing. I don't remember the rope that is attached over here, if this is the Draco or not.

Do you recognize anything on that vessel that would lead you to believe it's the Moor Mac Draco?

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to be.

Yes.

He has --

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THE CLERK: All right, so marked.

MR. GIUFFRA: He is marking them all.

MR. BUSHLOW: I think you introduced two more.

MR. GIUFFRA: One more.

MR. BUSHLOW: Didn't you introduce the two

log books?

MR. GIUFFRA: No, not yet. I think we introduced a medical report, the hospital report. I think we have

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A in evidence already.

CONTINUED CROSS EXAMINATION

BY MR. GYUFFRA:

Now, Mr. Scalafani, I would like to show you

Defendant's Exhibit A, which has just been marked in evidence.

That is the -- asfar as your recollection, that is the

gangway similar to the one on the Moor Mac Draco on the day

of your accident?

A Similar, yes.

Now, you testified previously that you came up the steps of the gangway, is that correct?

A Yes.

Q And as you -- on the right hand side and left hand side, there is a chain there; is that correct?

A Yes.

Now, as you were about to -- you were on the platform that we see at the top of the photograph, which is the circled mornt, is that it?

A Well, this is the whole platform, the circular mount and this other part.

Q This other part that is attached, does that go over the ship's railing?

A Well, according to this photograph, it doesn't go over the railing. But it goes over the ship.

Q Yes. Is that the way it was on the Hoor Mac

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Draco on the day of your accident, over the ship? I can show you photograph B, which gives you a better view of the -- in other words, you went --

- A I sec.
 - Q You went up to the top of the gangway?
- A Yes.
- And you went on to the circular part, and it extends somewhat, and then you were going to step down onto the ship itself?
- A Right.
- Q Now, as you were going up the gangway, you had the railing on both sides, is that correct?
- A Yes.
- And now as you reached the top of the gangway, and before you went on to the ship -- you can see in the photograph --
- A Yes.

be there.

- Q There is a photograph, Exhibit A, and you can see a rope.
- Now, was that rope in place on the day of your accident?

 A To be honest I don't remember the rope being there.

 The chain, I remembering being there on the top.
 - Q Wouldn't the rope normally be there?

 MR. BUSHLOW: I object to what normally would

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not saying it wasn't there. He doesn't remember. You don't remember the rope?

THE COURT: Yes. He doesn't remember. He is

- The chain I remember. The rope, I don't remember.
- Do you remember the rope being down lower in that Exhibit A?
- No, no. That's what I don't remember.
- What about the rope on the other side of the chain?
- This side?
- Yes. For example, in photograph F, there is a rope.
- That, I don't remember.
- Now, if the rope was not there, what would happen? Would you fall? Could you possibly fall?

MR. BUSHLOW: I object to that, your Honor. That is not part of this case. If the rope was not where?

The rope on the gangway.

THE COURT: You mean going up the gangway?

MR. GIUFFRA: Yes, your Honor.

THE WITNESS: Sometimes there are ropes.

MR. BUSHLOW: The accident happened on top of the platform, your Honor. It didn't happen on the way up. Up the gangway -- it's immaterial.

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MR. GIUFFRA: I realize that, but --THE COURT: All right, it doesn't make any difference.

Q As you were going up the gangway, you were holding on to the sides of the gangway, the railing? Yes.

Q Then you made the right hand turn? There was a turn?

Slight left.

Q You were going up the gangway and you made a left hand turn?

A Right.

Q And you were holding on to the chain at this point prior to your accident?

A I was holding on to the railing, and then I grasped the chain.

Q And then you continued walking forward on to the ship?

Yes, right.

Now, do you recall grasping the rope which appears in that photograph?

> MR. BUSHLOW: If your Honor please, he doesn't recall, he testified.

You mentioned there was ice and snow on the gangway. Now, where was the ice and snow? Will you point it

	Scalafani-cross 61	
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2	out in the photograph, Exhibit A.	
3	A On the gangway or the platform.	
4	Q On the platform?	
5	A I can't exactly pinpoint it. It was on the	
6	platform in patches.	
7	Q Well, did it cover the entire platform or jus	t
8	part of it?	
	A It covered the entire platform. But the snow	w
10	and ice were in patches, because of where men were stepping	
11	or standing.	
13	Now, when you say patches, were these large	
14	patches, small patches?	
15	A No, small patches.	
16	Q Where, as far as you can recall, was the patch	h
17	that you supposedly slipped on? Was it on the right side	
18	of that platform or the left side?	
19	No. Left hand side of the platform. Because	
20	I slipped on my left foot. Q And when you slipped and fell did you fell	
21	and lear, and rail	
22	forward onto the ship or did you go against the railing? A I fell toward my right.	
23	O Toward your stable	

Yes. I mean I fell forward.

24 25

Onto the ship?

	Scalafani-cross 62
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2	A On the ship. But I fell to my right.
3	Q And when you were walking up the walking on
4	the platform, you were walking sort of on the middle of the
5	platform?
6	A I don't remember if it could have been a
7	little on the left, or a little bit on the right.
8	Q Were you holding on to anything when you were
9	walking on that platform?
10	A No.
11	Q Nothing at all?
12	A I wasn't holding on to the railing when I steppe
13	onto the ship.
14	Q Were you aware of these patches, before or after
15	your accident?
16	A Before. Because I could have seen them before
17	you step on the ship.
18	Q So, in other words, you were going up the gangwey
19	you saw the patches of ice and snow?
20	A Right.
21	Q What was the temperature at the time of your
22	accident?
23	A I have no idea. I know it was a cold day.

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A I don't recall,

Was the sun out that day?

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Now, when you were working on the stringpiece, did you see any drippings of ice from the gangway?

A No.

Q At any time, did you see anyone clean the gangway?

A No.

Q No one at all?

A No one at all.

O During the, say, lunch period between twelve and one, did you have occasion to speak to the other longshoremen?

I believe I did.

Q Did they talk to you about the condition of the gangway?

A We spoke about it.

Q So that when you went up the gangway at two oclock in the afternoon, you were aware of the fact of the ice and snow being present on the gangway?

A Yes.

Q And also on the platform?

A Yes.

Now, do you know whether anyone from your gang attempted to clean off the platform?

A I would know for a fact that no one in the gang would clean that off.

Scalafani-cross

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You didn't see it? What about the other games that were working on the ship. Did they clean off the gangway?

A I didn't see anyone. As I stated previously, it's not the gang's duty to clean the gangway.

But if your gang saw a dangerous condition, and this could be classified as a dangerous condition, would you clean up the area, attempt to clean up the area?

MR. BUSHLOW: I object to that. I don't think that's his prevince --

THE COURT: His job --

MR. BUSELOW: (Continuing) -- to do anything.

MR. GIUFFRA: Your Monor, he just said it wasn't his gang's duty to clean up the area. So I am manking if the -- the next question is suppose he did see a dangerous condition, would it be his --

THE COURT: It doesn't make any difference.

It's a question of unseaworthiness, safe place to work.

Either one.

Now, this platform which appears in Exhibit A, and also Exhibit B, you would step off the platform and then you would be on the deck of the vessel?

A Yes.

Q Now, was there any snow or ice or part of ice or

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- 1	130a
1	Scalafani-cross 65
2	snow on the deck of the vessel itsels?
3	A I don't believe there was any snow or ice.
4	I know the deck was wet.
5	Q Right. And the only parts of snow and ice
6	was on the platform itself?
7	A Yes.
8	Q And you see these stanchions at the end of the
9	platform, for example, which appears in Exhibit B?
10	A Yes.
11	Q And was that in place at the time of your
12	accident?
13	A I don't recall.
14	Q Wasn't that a part of the gangway itself, the
15	stanchions?
16	A Yes, I imagine it would be. Yes.
17	Q And you have no recollection of whether it was
18	in place on the day of your accident?
19	A I don't remember.
20	Q Now, when you slipped and fell, you went forward
21	and toward the right?
22	A Yes.
23	Q So, looking at Exhibit B, you went toward the
24	right hand side?

Yes.

		Scalafani-cross 66
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2	Q	And toward the stanchion, which is on the right
	hand side?	
4	A	I believe so, yes.
5	Q	And at this point, did you strike any part of
6	the ship, be	sides the deck? In other words, did you strike
7		of the ship?
8	A	No, I did not.
9	Q	Now, after this occurred, did you speak to anyon
10	at all?	
11	A	After the accident?
12	Q	Yes.
13	A	Yes. I spoke to Mr. Misseri when -he came over
14	to me.	
15	Q	Did you speak to anyone else?
16	A	I spoke to Mr. Bianchi.
17	Q	Who is Mr. Bianchi?
18	A	He was working in another gang.
19	Q	I see. He was a longshoreman?
20	λ	Yes. And I was elso speaking to a Mr. O'Connor.
21	who was at th	attime, a superintendent for Universal.
22	Q	How long did Mr. Misseri and Mr. Bianchi stay
23	in the area?	

With me at the time of the accident?

After the accident?

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CROSS EXAMINATION

at this time.

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BY MR. COMMETTEE:

How long would you say it was before Mr. Q O'Connor came to the scene?

- After the accident, sir?
- Yes.
- I would say a good seven minutes, something like that.
- Q When you spoke to the timekeeper, were you on the vessel, or were you down at the timekeeper's office?
 - No, I was at the timekeeper's office.
 - So that you left the vessel?
 - Yes.
- And went to the timekeeper's office, is that Q correct?
- 23 Yes.
- 24 And you reported your accident?
- Yes. 25
 - And that's customary after you have been injured

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or anyone has been injured a vessel, they go to the timekeeper and give all the information they have with respect to the accident?

A Yes.

Now, when this accident happened, as I understand it, you sustained an injury to your right ankle? I am not going into it, but I want to make sure what part of your body was concerned. It was your right ankle, wasn't it?

- A And my right knee.
- Q Raght hand?
- A Right knee.
- Q Right. Now, with respect to the right ankle, did you testify that that right ankle turned under you and then you fell to the deck?

Did you fall to the deck?

- A Yes, I did fall to the deck.
- Q Before you fell to the deck, had your right ankle turned under you?
 - A No.
 - Q Had not?
 - A Did not.

MR. COMMETTEE: May I have this paper marked?

THE COURT: For identification?

MR. COMMETTEE: For identification, please.

THE CLERK: Document marked for identification,

Scalafani-cross

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as Third Party Defendant Exhibit G.

MR. COMMETTEE: I will show this to commsel, although I don't have to at this time. I am going to ask him about it, the report of the accident.

I am showing it to you at this time.

MR. BUSHLOR: Is that the third party defendant?

THE CLERK: G.

MR. BUSHLOR: All right.

Q Mr. Scalafani --

A Yes.

Q (Continuing) -- I show you a paper and ask you, do you recall that as the foreman's report of the accident?

A This is a form for an accident. Yes.

Q All right. Now, would you look please, at the history? First of all, are you identified as Charles Scalafani?

A Yes, I am.

Q And your Social Security number is contained thereon; is that correct? Is it not?

A Yes.

Q And your Waterfront number is contained thereon?

A Yes.

And your residence address, your marital status,

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and your date of birth, are they correctly stated?

A Yes.

All right. Now, would you look please, at the statement of the manner in which the accident happened, and read that to yourself.

All right. Is that also signed by the Superintendent? Do you recognize -his name, Vetriano?

Yes, it's signed.

And also by a safety engineer, John -- looks like Mochiano. Do youknow him as the safety man?

At that particular time, I believe that's who it was.

Did you tell the timekeeper that you had gone up to the gangway to get coffee orders for the men in the hold, and stepped off to the gangway into the deck and you turned on your right ankle, and you fell with your right leg under you?

No, I did not.

Did not.

Well, now, it was also your testimony, was it not, when we were here at the last session of the trial, that after you had fallen to the deck at that time, the moment you fell to the deck, you didn't know what it was that had caused you to slip or fall or lose your balance; isn't that true?

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Q Go ahead.

A No -- that's correct.

You had to turn around and you looked in at the platform, and then you saw that there was snow -- I think you also said there was sawdust with it?

A Yes. It was mixed.

So that the moment you fell onto the deck, at that moment, you weren't sure as to what happened to you, and it wasn't until you turned and looked at the platform, and saw the snow and the sawdust -- is that correct?

A Yes.

Q And was it your testimony that before you left the platform, you had slipped?

A I had slipped, yes.

Q And you say that at mo time did you ever turn your right ankle underneath you, before you fell? Or did you turn --

A I did.

Q And youslipped off the platform?

A After I hit my knee on the deck of the ship, the vessel, the deck of the ship.

Q Well, if you had your knee on the deck, your weight was not on your ankle, was it?

A Well, if I may explain.

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As I was stepping off the platform, I slipped on my left foot, causing me to fall forward. I struck the deck, the deck with my right ankle, and my right ankle twisting underneath me.

All right. Now, before this accident happened, had you had any difficulty with your left leg, the leg that slipped?

- A No.
- Never had a previous accident?
- Yes, I did. I had a previous accident.
- In that previous accident to your left leg, Q did you have any disability, after you -- after you went back to work?
 - I was able to work, if that's what you mean. (Continued on next page.)

23

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	Scalafani-cross 73
Q	Well, did you have any pain or limitation in
your left leg	?
A	Not much.
Q	Some?
A	Some, very little.
Q	Now, you told us that on the day this accident
happened, it	was not snowing that day? It was a cold day,
but it snowed	the day before, which was New Year's Day?
A	Yes.
Q	That was a rather substantial fall of snow, wa
it not?	
A	Yes.
Q .	When you arrived at the pier at eight o'clock
in the morning	, you remember you were a member at that time
of the Fortun	ito gang?
λ	Yes.
Q	But you were a dockman, one of the members of
the dock sect	on of the gang?
A	Yes.
Q	And when you reported to work at eight o'clock
the first this	g you had to do was shovel snow on the string-
piece, is that	correct?
λ	I wouldn't say shovel it.

What did you do?

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is that correct?

clean the gangway?

Q

Yes.

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You didn't see them cleaning the gangway that day, did you? Is that correct?

That's correct.

No, it is not.

If they had cleaned the gangway, whatever work they had done, would have been finished at eight o'clock when you came to work?

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If they cleaned, yes.

Starting at eight o'clock in the morning, all the members of the deck gangs that were working aboard the vessel that day, they ascend the vessel, using the same gangway, do they not?

A Yes.

O Do you remember whether it was three, four or five gangs working that day?

A I have no idea. I dont remember how many gangs there were.

Q But certainly a number of longshoremen went up at eight o'clock?

A Yes.

And any trades, independent trades that would have been working on the back way, would be using the gangway to that wessel?

A Yes.

Q And any crews or officers who had reason to go aboard, would have to use the same gangway?

A Yes.

Q And then at twelve o'clock, your men who had been working aboard the vessel came out; is that correct?

A Yes.

Q And at one o'clock when the lunch hour was

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finished, they would all go aboard to begin work again?
A Yes.
Q And they all worked from one to two?
A Yes.
Approximately two o'clock is when you received
an order for somebody to go up and get the coffee order; is
that correct?
A Yes.
Q I don't know whether you received an order.
Maybe it was just practice; is that correct?
A Normally it's practice. But normally, someone
is told specifically to go for the coffee.
Q All right. That's what they call a gofer?
A I guess so.
2 So you went up the gangway that day to get the
coffee orders from the gang that were working in the hold
around the deck?
A On the deck, yes, sir.
The same gangway that all these
men had used before that morning?
A Yes, I did.
You had no difficulty going up the gangway
until you reached the platform at the top; is that correct?

There was a little difficulty walking up the

gangway, because it was -- still had ice and snow and sawdust

	Scalarani-cross //
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2	mixed.
3	Q So when you reached or recognized that difficulty
4	then you held on to the railing; is that right?
5	A I always hold on to the railing.
6	Q All right. When you reached the platform, at
7	that particular time, you didn't know what caused you to fall
8	until after you fell and looked back; is that correct?
9	A Well, I had an idea what might have been, but
10	I wasn't sure, until I did turn around and look at it.
11	Q Now, was Mr. Bianchi a member of your gang,
12	Portunato's gang?
13	A No.
14	Q He was a member of another gang?
15	A Yes.
16	Q But he was the man who was on deck?
17	A Not at the time of the accident.
18	Q He came over afterwards?
19	A After the accident occurred.
20	Q Was there any member there of the longshore
21	gang that day?
22	A Yes, they were.
23	Q Who was that?

Mr. Misseri.

Is Mr. Misseri one of the gentlemen in court

24

When you saw him, did you look at him as you

What were you looking at as you stepped off?

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today?

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stepped off?

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No.

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2	A As you step off, all you can see is the
3	midships.
4	Q Could you also see the wet deck?
5	A If you look down, you can see what was on the
6	deck.
7	Q Did you look down?
8	A Yes, I looked down.
9	Q Was it Misseri who helped you up?
10	A Excuse me?
11	Q Was it Misseri who helped you up?
12	A Yes, it was.
13	MR. COMMETTEE: That will be all.
14	MR. BUSHLOR: I have no further questions.
15	THE COURT: All right, step down. Thank you.
16	(Witness excemed.)
17	MR. COMMETTEE: All right. I won't waste
18	time on this.
19	THE COURT: Next witness.
20	MR. BUSHLOR: I will have to call him, your
21	Honor. He's in the hall.
22	ANTHONY MISSERI, called as a witness, having
23	been first duly sworn, by the Clerk of the
24	Court, was examined and testified as follows:
25	DIRECT EXAMINATION
	BY MR. BUSHLOR:

Misseri-direct

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MR. GIUPPRA: Misseri and Munzo.

THE COURT: What?

MR. GIUFFRA: 21A, your Honor. In 20, we asked him what witnesses, and 21, you know, the name, and address of each witness. And he has answered Anthony Munzo.

THRCOURT: I have to find it first.

MR. BUSHLOR: If your Honor please, it was a -- I will drag it out in a moment.

THE COURT: All right. Let's see what the answers were. I have the interrogatories, but I don't see the answers to t.

All right, I have interrogatory 21.

MR. BUSHLOR: Well, your Honor, I will concede that 5he --

THE COURT: Name of each witness. What --

Anthony Munzo, 25 Canoe Street, Staten Island.

THE_COURT: Is that what you put down?

MR. BUSHLOR: That is what is down there.

But that's the way he knew him. Because I will ask the gentleman wherehe lives, and you have the

address. It's practically the same address.

THECOURT: All right, you can give it on a voir

	11 -	14/4	
1		Misseri-direct	82
2	dire?		
3		MR. BUSHLOR: I beg your pardon	n?
4		THE COURT: A voir dire.	
5		MR. BUSHLOR: All right.	
6	Q	What is your present address?	
7	A 20 Car	ew Avenue, Staten Island.	
8	Q	How long have you lived there?	
9		THE COURT: 20 what?	
10		THE WITNESS: Carew, C-A-R-R-	E-A-U.
11	Q	How long have you lived there?	
12	A	Nine years.	
13	Q	What's the	
14		THE COURT: How many years?	
15		THE WITNESS: Nine years.	
16		THE_COURT: Nine years.	
17		MR. BUSHLOR: That's the address	ss, your Honor.
18	It show	s how much he knew this man: Ki	new it was
19	25 Carr	reau. It was just an error. He	thought it
20	was Mun	zo and his name is Misseri.	
21		THE COURT: Where does Munzo liv	re?
22		MR. BUSHLOR: There is no Munzo	
23		THE COURT: There is no Munzo.	
24		MR. GIUFFRA: It's probably on d	
25	Vessel	somewhere, but not in this gang.	

Misseri-direct

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MR. BUSHLOR: Not in this gang.

MR. GIUFFRA: I believe Mr. Scalafani knew
Mr. Misseri's name ver clearly when he testified
today and --

THE COURT: Well, you know, these things -knowing what I know, I will permit you to amend it
and to have it included, the proper witness' name.

MR. BUSHLOR: Thank you, your Honor.

THE COURT: All right.

MR. GIUFFRA: I would like to take my exception.

THE_COURT: You can take an exception to it being prejudicial.

All right.

Q Mr. Misseri, on January 2, 1971, you said you worked with Fortunato's gang in what capacity?

A I worked on deck that day.

Q Now, about two o'clock on that day, did you witness an accident?

A Yes.

Q Who was the party that was injured?

A Charles Scalafani.

Q Do you know Charles Scalafani from thepiers?

A Yes.

Q Do you know him personally?

1		Misseri-direct 84
2	A	No.
3	Q	Do you know his wife?
4	A	No.
5	Q	Children?
6	A	No.
7	′ Q	Ever visit him?
8	A	No.
9	Q	Did he ever visit you?
10	A	No.
11	Q	Did you ever work in his gang before January 2,
12	1971?	
13	A	Yes.
14	Q	The only way you know Mr. Scalafani is from the
15	piers?	
16		From the piers.
17	Q	Will you please tell the Court exactly what
18	you witnessed	about two o'clock On January 2, 1971?
19	A	I saw Mr. Scalafani fall on the gangway.
20	Q	Did you see him fall?
21	A	Yes.
22	Q	Where were you at the time?
23	A	About three or four feet away from him.
24	Q	Where were you going?
25	Α	I was going down the galley.

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with sawdust after the accident?

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I saw skidmarks on it.

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Did you notice the place from which Mr. Scalafari () fell as regards to this ice and the skidmarks?

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MR. GIUTFRA: Your Honor, this is all conjecture.

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Yes.

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A

gaw it.

Q Did anyone else come along after that?

A Yes. It's Mr. Bianchi, I believe.

Is that another longshoreman?

Yes.

Q Is he in your gang?

No.

Did anyone else come along after that? 0

Mr. O'Connor.

Who is Mr. O'Connor?

I believe he is the superintendent. Something

like that. 22

> Are you still employed as a longshoreman today? Q

Yes.

Are you working in Brooklyn today? 2

1		Misseri-direct 87
2	A	Yo.
3	Q	Where are you working?
4	A	Holland Hooks, Staten Island.
5		MR. BUSHLOR: Your witness.
6	CROSS EXAM	
7	BY MR. GIUE	
8		
9	Q	Mr. Misseri, did you strike that.
10		anyone ever talk to you about this case besides
	Mr. Bushlor	
11	A	'Io one.
12	Q	Did you ever meet somewody by the name of
13	Howard Blum	?
14	A	Excuse me?
15	Q	Howard Blum?
16	A	No, sir.
17	2	You never spoke to anyone about this case?
18	A	no.
19	Q	Did anyone by the name of Mr. Grillo ever speak
20	to you abou	t this case?
21	A	Mr. Grillo? No one spoke to me.
22	Q	In other words, the only person you talked to
23	about this	case was Mr. Bushlor, or someone from his office?
24	Α	Mr. Bushlor.
25	o	Is that correct?

1		Misseri cross - 88
2	A	Yes, sir.
3		
4		MR. BUSKLOR: Tony from my office?
5		MR. GIUPPRA: Someone from your office.
		HR. BUSHLOR: All right.
6	Ω	Do you ever recall speaking to a man by the
7	name of Mr.	Blura?
8	A	No. I spoke to no one.
9	Q	Did you ever give a statement to anyone?
10	A	No.
11	Q	Did anyone ever write up a statement and you
12	refused to s	sign it?
13	A	Sign? No.
14	Q	No one at all?
15	A	No. No one at all.
16	Q	And do you ever recall speaking to a Mr. Blum
17	on January 1	4, 1971, at the 23rd Street Pier?
18	A	I spoke to no one.
19	. Ω	No one at all?
20	A	ho one at all.
21	Ω	Do you ever recall speaking you made no
22	statements w	hatsoever?
23	Λ	None whatsoever.
24	5	To anyone?
25	Α	To anyone.

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Were they in place on the date of January 2,

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1971?

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I don't remember.

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Would the ropes normally be in place?

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or not.

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talking about?

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What part of the platform was --

Part of the platform is under the ship. A

Q flow, what part of the platform was under the

About right here. About here. A

How much in distance? 0

	1300
1	Misseri-cross 91
2	A I don't know.
3	Q Three, four feet?
4	A If you say so.
5	Q Would that be correct?
6	A Hard to tell right now.
7	Q Well, in other words, some distance was
8	underneath the overhead of the ship; is that correct?
9	A Yes. Some of the gangway is under the ship.
10	Right.
11	Q On January 2nd is that correct? In other
12	words, part of that platform is underneath the ship.
13	A Right.
14	Q Part of the platform which was underneath the
15	ship, did that have ice or snow on it or sawdust?
16	A Yes, it did.
17	Q It did?
18	A Yes.
19	Q Now, how much of an area you mentioned the
20	skidmarks. Where was the skidmark?
21	A Right about here on this part.
22	Q On the plate?
23	A On the plate.
24	Q Now, the plate is back further; is that correct?
25	A The plate is like actually, it's off the ship

. ...

Misseri-cross 1 The plate is overhanging the ship? That's Q 2 where you make the turn? 3 A Right. 4 And that's where you saw the skidmark? 5 Yes. 6 Now, how far can you estimate for us the 7 distance from the skidmark on the plate to where the end of the platform was? Is that a distance of six feet? 9 Here is another photograph, Exhibit 5D which might 10 help you out. It's another angle. 11 Now, rephrase that question one more time. 12 Where was the skidmark? The skidmark was on Q 13 the circula part of the platform? 14 A Right about here, right. 15 Q Do you want to mark that with a pen? 16 THE COURT: See if this will work. 17 Q Do you want to use my pen? 18 MR. BUSHLOR: What exhibit is that? 19 MR. GIUFFRA: Exhibit D. 20 THE WITNESS: Roughly about here. Right 21 within this area on the side. 22 THE COURT: Where is the marking? 23

MR. GIUFFRA: This is the skid.

THE COURT: Make a line with an X. Skidmark.

MR. GIUFFRA: Do you want me to mark skid?

1	Misseri-cross 93
2	THE COURT: Yes, write skid.
3	Q Looking at Exhibit A, that's from another angle,
4	where would the skidmark be? In this area?
5	A No. Say right about here.
6	Q Right here?
7	A Right here.
8	Q Right here?
9	A Off to the left of it.
10	Q Okay. That's to the left.
11	A Yes.
12	Q Okay.
13	MR. BUSHLOR: I suggest you let the witness
14	mark it.
15	THE COURT: He adopts it.
16	You adopt it, don't you, what he marked?
17	That's the right place where he marked?
18	THE WITNESS: Well, your Honor, if ou are
19	going we'll say we are going to put a mark that
20	would be the middle of the plate. I said off to the
21	left. If you take the plate here, your Honor, and
22	put it right here
23	THE COURT: All right, you mark it then. Mark
24	it big enough and write skid.

MR. GIUFFRA: That is on Exhibit B.

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THE COURT: You mark the skidmark where you say -- mark it big enough in proportion to the picture, and then write the word skid.

How is that?

MR. GIUPPRA: All right.

THE COURT: Okay. The witness marked it.

MR. GIUPFRA: That's on B.

Looking at the Exhibit B, we have marked skidmark. That's right near the stanchions; is that correct?

A Excuse me.

Q The stanchion. Do you see the stanchion?

A Yes.

Q Was that in place on the date of the accident, as far as you can recall?

A As far as I can recall, yes.

Q And looking at Exhibit A, the stanchion is in place, and that was in place on the day of the accident?

A Do you mean this right here?

The one on the other side.

Do you see it?

A Yes.

Q That was in place?

A Yes, I see.

And could you estimate for us the distance between where you saw theskidmarks and the end of this plate?

1		Misseri-cross 95
2	Α	I couldn't estimate the distance.
3	Q	Well, do you have any idea what the length
4	of this platf	orm
5	A	No, I don't.
6	Q	You have no idea?
7	A	No, I don't.
8	Q	Have you ever gone up and down that gangway
9	a number of t	imes? I imagine
10	A	Yes.
11	Q	You have no recollection or any estimate how
12	big it was?	
13	A	I haven't gone up and down this gangway. It'
14	now almost for	r years.
15	/ 0	You have no independent recollection of this
16	date, as to ho	w big the the length
17	A	No.
18	Q	Now, besides seeing that one skidmark, which
19	you have marke	d in the various photographs; did you notice
20	any other skid	marks on that platform?
21	A	No.
22	Q	On the circular part?
23	A	No.
4	Q	And your recollection from the your recolle
5	tion from the	skidmarks on the circular part of the gangway,

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the skidmarks were on the circular part of the gangway, is that correct?

Yes.

Now, when you witnessed this accident, was there anyone else in the area besides yourself and Mr. Scalafani?

I saw the accident. And within minutes later, minutes, Mr. Bianchi came over and saw it.

> Q Mr. Bianchi came over?

Yes.

Do you know where Mr. Bianchi was working?

I believe he was working aft.

Working aft: Now, during the lunch time break, between twelve and one, did you have occasion to talk to Mr. Scalafani, about the condition of the gangway?

No.

Do you know whether there was any water -or was the ice melting on the gangway?

No. That was ice. Solid ice.

Solid ice?

Solid ice.

When you went up the gangway, did you take any extra precautions?

> MR. BUSHLOR: I object to this, your Honor. What he did is immaterial.

> > THE COURT: That's right. Sustained.

1		Misseri-cross 98
2	A	No.
3	Q	The only thing you saw was what? Ice?
4	A	The ice and the sawdust.
5	Q	And the sawdust.
6	Did t	he ice cover the entire platform, or just part
7	of it?	
8	A	Part of it. Patches.
9	Q	When you say patches, how high were the patches
10	A	Well, let's say roughly so much. Patches all
11	around.	
12	Q	Where were the spots? All around the circular
13	part?	
14	А	All over the circular part.
15	Q	Also on that platform which extended over?
16	A	Yes.
17	Q	From your observations, did it look like
18	someone trie	d to clean it up?
19	A	Yes, it looked like someone tried to clean it
20	up.	
21	0	Did you clean it up?
22	A	No.
23	Q	Anyone in your gang clean it up?
24	A	710.
25	Q	Anyone from your gang report to anyone from
	the vessel, o	concerning this condition?

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MR. BUSHLOR: I object to the question.

How doeshe know what or how anyone in his gang
reported to whom? He can ask him what he did.

THE COURT: What he did.

O Did you report to any of the ship's officers, the condition of the --

A No.

Q Did you tell Mr. Fortunato about this condition?

A I don't think so.

Now, were you present when any of the other members of your gang spoke to Mr. Fortunato?

MR. BUSHLOR: Well, your Honor --

Q During or any time prior to the accident.

A I have a job to do. I do my job and I don't see anyone-speak.

Q Did you see anyone from Universal besides Mr.
O'Connor on the ship?

A No.

Q No one?

A No one.

Anyone employed as a safety man on this date?

MR. BUSHLOR: If you know.

Q You don't know?

A I wouldn't know.

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	MR.	GIUFFRA:	No	further	questions	at	this
time.							

THE COURT: All right, any questions.

MR. COMMETTEE: Counsel referred to an

unsigned statement. May I have that marked, please?

THE COURT: Yes. We should have it.

MR. GIUFFRA: Will you mark this, please?

THE CLERK: Document marked for identification,

as Defendant's Exhibit H.

MR. GIUFFRA: I just have one more quustion, your Honor.

THE COURT: All right.

CROSS EXAMINATION (CONTINUED)

BY MR. GIUFFRA:

Mr. Misseri, have you ever brought any claims against Moore McCormack?

> A Excuse me?

Did you ever bring any action against Moore-McCormack Lines?

> A Myself?

Q Yes.

A Yes.

Was Mr. Scalafani a witness?

No.

			Misseri-cross	101
1				
2	Q	In	those cases?	
3	А	No.		
4	Q	How	many claims did you bring	against Moore
5	McCormack	3		
6		MR.	BUSHLOR: Objection, your	Honor. It has
7	no	bearing	•	•
8		THE	COURT: It has no bearing	on the issue.
9		MR.	GIUFFRA: I have no further	r questions.
10		THE	COURT: All right.	
11	CROSS EXA	MINATION		
12	BY MR. CO	MMETTEE:		
13	Q	Was	Mr. Bushlor your lawyer?	
14	. A	Ko.		
15	Q	Mr.	Fortunato?	
16	A	No.		
17	Q	Now	, on the date that this acci	ident happened,
18	you were	working a	as a deckman in Fortunato's	gang?
19	A	Yes		
20	Ω	Wer	e you regularly a member of	Fortunato's gang
21	A	No.		
22	Q	You	were a member of Joe Lusist	to's gang?
23	- A	Yes		
24	Q	What	t is your Social Security nu	mber?
25	A	061	-32-5963.	

Misseri-cross 102 1 2 Q What is your waterfront number? 3 60341. Now, about a week or two after the accident, 4 do you remember talking with anyone at the 23rd Street Pier 5 when you were asked about this accident that had happened 6 to Mr. Scalafani? 7 I spoke to no one. 8 A You don't remember speaking to anyone? 9 10 No. Did you ever tell anyone that you were Anthony 11 Misseri, that your waterfront number was 60341, when you --12 A I told you no one. 13 0 Is that your right number? 14 That is correct. 15 Did you tell them that you were ordinarily 16 assigned to Gerald Lusisto's gang, but on the day of the 17 accident, you were assigned to Fortunato's gang? 18 I spoke to no one. 19 But that is true? You were a member of Joe 20 Lusisto's gang, and you were assigned on the date of the 21 accident to Fortunato's gang? Isn't that true? 22 A That's correct. 23 This is gang Number 2302? 24 I don't remember.

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Q Before this accident happened, had you been coming from a ship's passageway on the deck toward the gangway?

- A Toward the galley, correct.
- Q Did you tell anybody you were coming from the ship's passageway to hatch number four gangway?
 - A No.
 - Q You didn't tell anybody that you saw him fall?
 - A I spoke to no one.
- Q Was Mr. Scalafani in pain and complaining about his ankle when you helped him?
 - A Yes.
- Q And you didn't tell that to anybody, that he was in pain?

MR. BUSHLOR: If your Honor please, the witness has said innumerable times that he spoke to no one.

MR. COMMETTEE: He may. But the test so his credibility of every line that I read is in agreement with whether what he tells me now is -- and I think it is for the Court to determine this. And May I pursue that?

THE COURT: Yes, you may ask the questions, but not --

MR. COMMETTER: Well, I submit it's for whatever

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credibility issue there is.

THE COURT: It can't be for recent fabrication if it's the same thing on the piece of paper that you are reading to him, and that he is saying today.

MR. COMMETTEE: All right. I reached the crux of that.

THE COURT: I know that. I just want to make sure we are going through the same rules of evidence.

MR. COMMETTEE: I think we are in the same boat your Honor.

THE COURT: That's for sure.

MR. COMMETTEE: You were there before I was.

THE COURT: No, I wasn't there before.

Q "I did not help Scalafani off the ship."

Did you make any statement that you don't remember any condition or any factors that could have caused Scalafani to fall?

MR. BUSHLOR: Your Honor, I didn't get that.

THE COURT: He's asking whether you made that statement to anyone at any time.

THE WITNESS: I never made a statement to anyone.

MR. BUSHLOR: If your Honor please, may I object now.

THE COURT: Go -ahead.

Misseri-cross

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MR. BUSHLOR: I object entirely to the procedure on the grounds I am sure Mr. Commettee knows / to use a statement of impeachment. He can show --

THE COURT: He is not impeaching him.

MR. BUSHLOR: Oh.

THE COURT: It's not a question of impeachment.

MR. BUSHLOR: He's trying to refresh his recollection?

THE COURT: He's trying to determine whether he spoke to anyone.

MR. BUSHLOR: It's been answered 20 times.

MR. COMMETTEE: So there is no question about it, Mr. Bushlor -- I don't hide anything.

THE COURT: All right. He has it down there on a piece of paper, the very things that he said, and he wants to know how it got on the paper.

MR. COMMETTEE: I can tell you that I have been advised that Mr. Blum is deceased.

MR. BUSHLOR: I don't even know Mr. Blum.

MR. COMMETTEE: Apparently, he was the investigator. That's all I can say.

MR. GIUFFRA: The last time I spoke to him, he was dying.

MR. COMMETTEE: He was dying of cancer. We

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will check that out and submit it to the Court this afternoon.

THE COURT: There 's only one way --

MR. COMMETTEE: That's it.

THE COURT: Otherwise, they must accept his word.

MR. COMMETTEE: The last time when we attempted to get him, we were told he was dying of cancer.

THE COURT: That's regrettable, of course.

MR. COMMETTEE: But we will advise the Court whether the man has died.

THE COURT: All right.

MR. COMMETTEE: I have no further questions.

THE COURT: All right.

MR. BUSHLOR: Thank you, Mr. Misseri.

(Witness exc wed.)

MR. BUSHLOR: Will you please send Mr. Bianchi

THE COURT: Is he a short witness?

MR. BUSHLOR: Let's finish, because I want to ask your Honor if I can be excused at two o'clock to attend two very important conferences in front of Judge Catoggio with Mr. Commettee. I think we can finish this. Unless they have any witnesses.

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But I can finish my case, your Honor, with the next witness.

THE COURT: I just want to --

MR. COMMETTEE: I have one problem, too.

We have the Staten Island case in the Court of Appeals, for a preliminary trial.

This can be off the record.

THE COURT: Off the record.

(Discussion off the record.)

(Recess taken.)

MR. BUSHLOR: If your Honor please, I will concede that Defendant's Exhibit --

MR. COMMETTEE: G.

MR. BUSHLOR: (Continuing) G is in the ordinary course of business, except that the people who signed this, both the-foreman and the safety man, had not witnessed the accident, and never spoken to the claimant, and had gotten their information from somewhere else, except the claimant or personally observing it.

MR. COMMETTEE: There is a record that was made by the timekeeper and then given to the superintendent to sign and the safety man to sign.

But the information in there is obtained by

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A Longshoreman.

the timekeeper upon a report.

And this is a form that is kept in the ordinary course of business.

MR. BUSHLOR: For what it is worth, your Honor.
Thank you.

THE COURT: For whatever it is worth.

MR. COMMETTEE: That eliminates the necessity of me producing someone from the office to so testify.

THE COURT: All right.

MR. BUSHLOR: What is that?

THE COURT: Mark it.

MR. COMMETTEE: It is now in evidence.

MR. BUSHLOR: That is G for evidence.

THE CLERK: Yes, sir. The defendant third partyExhibit G is marked for identification and now marked in evidence.

BIANCO BIANCHI, called as a witness,
having been first duly sworn by the Clerk of
the Court, was examined and testified as

DIRECT EXAMINATION

follows:

BY MR. BUSHLOR:

Q Mr. Bianchi, what is your occupation?

		174a
1		Bianchi-direct 109
2	Q	How long
3		MR. GIUFFRA: Your Honor, may I interrupt.
4		I would like to note my objection to Mr. Bianch
5		He is not even listed in the
6		MR. BUSHLOR: Mr. Bianchi is not an eyewitness
7	to the	accident. They asked for eyewitnesses.
8		MR. GIUFFRA: Okay.
9		THE COURT: All right. Not an eyewitness.
10		MR. COMMETTEE: Do you have any witnesses to
11	the ac	cident?
12		MR. BUSHLOR: No.
13		He is not a witness to the accident.
14		R. GIUFFRA: He is not.
15		
16		MR. BUSHLOR: No.
17		THE OOURT: No. That's what he says.
18	Q	Mr. Bianchi, how long have you been a long-
	shoreman?	
19	A	Twenty four years.
20	Q	Are you a Facther of a regular gang?
21	A	Yes.
22	0	What gang?
23	A	James Stratis' gang.
24	Q	On January 2, 1971, by whom were you employed?
25	A	Universal.
	Q	Were you working on board a vessel?

		1/30
1		Bianchi-direct 110
2	A	Yes.
3	Q	What 23rd Street Pier?
4	A	Yes.
5	Q	Is that the same vessl that Mr. Scalafani was
6	working on?	
7	λ	Yes.
8	Ω	What hatch were you working?
9	A	Number five hatch.
10	Q	Is that aft or forward of the 'midship?
11	A	Aft.
12	Q	What time did you start working that day?
13	A	Eight o'clock in the morning.
14	Q	Did you work the day before, January 1st?
15	A	No.
16	Q	Do you know what the condition of the weather
17	was January	1st?
18		Yes.
19	0	What was it?
20		It was snowing.
21	Q	Hard?
22	λ	Yes.
23	Q	Medium?
24	A	Yes, hard.
25	Q	When you got to work at eight o'clock in the

		176a
. 1		Bianchi-direct 111
2	morning, had	it stopped?
3	A	Yes.
4	Q	Now, about two o'clock two o'clock on that
5	day, January	2, 1971, where were you going?
6	A	I was going to the bathroom.
7	Q	Were you aboard the vessel?
8	A	Yes.
9	Q	Hould you tell this Court what you saw when
10	you got to the	ne bathroom?
11	A	I saw that man sitting by the gangway hurt.
12	Q	Was there anybody with him?
13	A	Yes, there was another man with him.
14	Q	Did you know this man before this accident?
15	λ	I knew him by seeing him, but I didn't know
16	who he was, n	0.
17	Q	Did you ever visit with him socially?
18	A	No.
19	٥	Does he know your wife or children?
20	A	No.
21	Q	Do you know his wife and children?
22	A	No.
23	Q	Rver go to his house?
24	A	No.
25	Q	Ever goto your house?

177a

Bianchi-direct 112 1 A No. 2 Do you know him from the piers? 0 3 Yes. Seen him around? 5 Yes. 6 Do you know what gang he works for? 7 Yes. 8 What gang? 9 Fortunato's gang. 10 Now, when you got to him what did you do when 11 you saw him sitting on the deck? 12 λ I asked him what happened? 13 What did he say to you? 14 He said --15 MR. COMMETTEE: I object to that. 16 MR. BUSHLOR: If your Honor please, I think 17 that door was opened by Mr. Giuffra when he asked 18 the plaintiff, did you have a conversation with 19 Mr. Misseri; did you have a conversation with 20 Mr. Bianchi; what did you tell him. 21 THE COURT: He asked him that? 22 MR. BUSHLOR: Yes, he did. 23 MR. GIUFFRA: I don't recall asking him that. 24 BUSHLOR: Or Mr. Commetti. 25

One of them asked him that.

Did you have a conversation with the man?

THE COURT: With Mr. Bianchi. Did you ask
him that? I don't remember him asking.

MR. GIUFFRA: I don't believe I recall asking him the question.

THE COURT: What?

MR. GIUFFRA: I don't recall asking him that question.

THE COURT: Do you have it? I don't recall him asking the question, whether he had a conversation with Mr. Bianchi.

I remember Mr. Bianchi --

MR. COMMETTEE: As a matter of fact --

THE COURT: (Continuing) -- name coming up.

MR. COMMETTRE: Even if the witness, the previous witness, said he -had a conversation with the defendant, it would seem to me not to have any relation with the plaintiff after this -- the time as to the accident as to what caused him to fall. It would be strictly hearsay.

THE COURT: Well, yes, the conversation --

MR. BUSHLOR: All right, let's forget it.

THE COURT: If he saw the --

MR. BUSHLOR: Let's forget it.

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2		THE COURT: In point of res gestae, the
3		MR. BUSHLOR: I will withdraw that question.
4		THE COURT: All right.
5	Q	Just answer yes or no. Did you have a
6	conversation	with Mr. Scalafani?
7	A	Yes.
8	Q	And as a result of that conversation, was there
9	was your at	tention called to some part of the plateuon se
10	the gangway?	
11		MR. GIUFFRA: I object to that. Lessing.
12	Q	As a result of that -
13		THE COURT: That's not all. He's going to
14	get it	eventually.
15		As a result of that conversation, did you do
16	something?	
17	0	Did you do something, or did you see something
18	*	Yes.
19	Q	What did you see?
20	A	I seen where he slipped.
21	Q	Where was that?
22		A GIUFFRA: I move that that he stricken.
23		THE COURT: Yes.

All right. Go on --

THE COURT: How would he know that? What did

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Q

		Bianchi-direct	115
1			
2	you se	e?	
3	7	THE WITNESS: I seen a skidmark	like this.
4	Skidde	d. I didn't see him fall.	
5		THE COURT: Now, wait a minute.	
6	Q	All right, forget that.	
7		THE COURT: What did you see?	Don't tell us
8	as if		T.
9		THE WITNESS: Skidmark.	
10		THE COURT: That's all.	
11	Q	Where? Where did you see it?	
12		On the plate, whatever you call	it who plate
	0	Now, afteryou were there, did a	
13	come over?	wow, arcaryou were Chers, did a	napoda erse
14			
15	A	Yes, a superintendent came over	•
16	Q	What was his name?	
17	A	Pat O'connor.	
18	Q	After that, did Mr. Scalafani le	eave the vessel?
19	A	I don't know. I didn't. I saw	I just went
20	away.		
21		MR. BUSHLOR: That's all. Than	nk you.
22		THE COURT: All right, any ques	tions?

CROSS EXAMINATION

BY MR. GIUFFRA:

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Q Mr. Bianchi, did you ever have any claims

time?

plaintiff.

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Yes.

THE WITNESS: Yes.

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MR. BUSHLOR: I object to how many times as being --

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THE COURT: It doesn't make any difference.

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Q Is Mr. Bushlor your attorney?

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I didn't hear you.

THE COURT: Who is your lawyer?

after your break, did you notice any skidmarks on the gangway or the platform?

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I didn't look. I didn't see any. I didn't look.

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There could have been some?

Bianchi-cross 118 1 Possibly. But I didn't look. 2 Now, looking at the photographs which are in 3 front of you, you see on Exhibit A and B, a line that says 4 skidmark. 5 Was that in the same relative area where the skidmarks 6 were that you noticed? 7 Yes, I would say it was there, yes. 8 Now, did you notice also in photograph A, lines, 9 ropes? Do you see those on that photograph? 10 I don't remember the rope. 11 You don't remember seeing the rope at all? Q 12 No. 13 Q You saw the railings? 14 I remember these uprights. 15 The stanchions. 16 I don't remember the ropes. 17 But normally, is the rope in place in that 18 area? 19 MR. BUSHLOR: I object to what normally is. 20 THE COURT: Yes. Normally is out. 21 Q You don't remember seeing that rope there at 22 a11? 23 No. 24 When you came back up the gangway at one o'clock 25 did you look at the top of the platform?

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		λ	Well,	I walked	over.	I	must	have	looked	at	it
to	see	where	I was	going.							

- Did you have any problem walking on to the shi
- I seen there was some sawdust and a littl ice around.
- Where was the ice? Was it on the platform on that circular part?
- It was all around. It was in patches all over. I can't remember where it was.
 - Was it melting down?
 - No, it wasn 't melting. It was cold.
- Was there any part of that platform or the circular part, where you could see the bottom, the platform itself?
 - A Yes. Some parts, yes.
 - How many patches of this -- was it ice you saw?
 - Ice, snow and sawdust.
 - And how many patches did you see?
 - Several patches. I dont memember how many.
- Were there any patches on the platform itself, which is the straight part looking at exhibit -- exhibit A, this part_right here, the square part?
 - There was some over here.
 - I see. Where? On the --

	Bianchi-cross 120
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2	A On the a little patch in here, too.
3	Q Was that part of the platform, was that under
4	neath the ship?
5	A Part of it I think is.
6	Q All right. And what about on the circular
7	part. Did you see ice on the circular part?
8	A Yes.
9	Q Did you see patches?
10	A Patches, yes.
11	Q How many patches did you see?
12	A Several. I don't know how many were there.
13	Q This skidmark, how long is the skidmark?
14	How long was that?
15	A Over a foot long.
16	Q Do you have any idea what the distance from
17	the skidmark to the deck of the vessel was?
18	A I didn't hear you.
19	Q Do you know the distance between the skidmark,
20	where the skidmark was, to where the deck of the vessel was?
21	Do you have any idea?
22	A I have no idea. But I would guess if you
23	want me to guess?
- 11	

Q Yes.

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MR. BUSHLOR: I object to a guess.

		Bianchi-cross	121
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2		THE COURT: Yes.	
3	Q	What would you estimate?	
4	A	Few feet, couple of feet.	
5	2	Pardon me?	
6	A	Couple of feet.	
7	Q	About two feet?	
8	A	Yes.	
9	Q	That was from the area where	the skidmark
10	was until	the deck of the vessel?	
11	A	I don't understand you.	
-12	Q	You saw the skidmark?	
13	λ	Yes.	
14	Q	Is that correct?	
15	A	Yes.	
16	Q	That was that shows up in	the photograph?
17	. A	Well, you mean down in the we	
18	0	Yes.	
19	A	It was more than two feet.	
20	Q	How much was it?	
21	A	Three or four feet.	
22	Q	In other words, from the w	here the skidmarks
23	were until	the well of the vessel itself.	
	A	In the well	

A In the well

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.Q Three or four feet?

1		Bianchi-cross 122
2	A	Around that.
3	Q	Did you see Scalafani was he sitting in
4	the well?	was ne sitting in
5	A	He was sitting in the well when I saw him, yes
6	Q	So the distance from the skid to that, is about
7	three or four	feet; is that correct?
8	A	I think so, yes.
9	Q	Now, did you see Mr. Misseri at the scene of
10	the accident	
11	A	Yes.
12	Q	You sat Pat O'connor?
13	A	Yes.
14	Q	Anyone else?
15	A	No.
16	Q	No one else?
17	A A	No.
18		MR. GIUFFRA: I have no further questions.
19		MR. COMMETTEE: No questions.
20		THE COURT: All right, step down.
21		MR. BUSHLOR: No questions.
22		(Witness excused.)
23		THE COURT: Any other witnesses?
24		MR. BUSHLOR: If your Bonor please, at this
25	time,	would like to introduce into evidence, a
	certif	ied copy of the local etymological data of the

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United States Department of Commerce, National Oceanic and Atmospheric Administration, for the month of January, 1971, in New York, Central Park Observatory.

THE COURT: All right. That's for the weather.

MR. BUSHLOR: Yes.

MR. GIUFFPA: I would like to note my exception. If he shows the weather report in Brooklyn--

MR. BUSHLOR: Your Honor --

MP. GIUFFRA: This is Central Park.

MR. BUSHLOR: There are none, your Honor.

THE COURT: Well, off the record.

(Discussion off the record.)

THE CLERK: Weather report marked in evidence as Plaintiff's Exhibit 1.

MR. BUSHLOR: If your Honor please, at this time, I would like to -- like to have your Honor take judicial notice of 29 CFR Part 1504, Safety and Health Regulations for Longshoring. More particularly, Section 1504.91.

THE COURT: What is that?

MR. BUSHLOR: 29 CFR.

THE COURT: Yes.

MR. BUSHLOR: 1504.

THE COURT: 1504.

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MR. BUSHLOR: Right. And more particularly, 1504.91, caption, Sub Part one, general working conditions, housekeeping, subdivision C.

Slippery conditions shall be eliminated, as they occur.

MR. GIUFFRA: Your Honor, I would like to note my objection to the introduction of those records, as against my client. They don't apply against me.

The introduction to the Longshoremen's Act, says specifically pertaining to the employer, not the steamship company.

THE COURT: That's what it says.

MR. BUSHLOR: If your Honor please, may I read that part and se will straighten that out once and for all. We just had this off the record.

THE_COURT: You are talking about the preamble.

MR. GIUPPRA: Yes. The enforcement of those regulations against the employer.

MR. BUSHLOR: All right. I call your Honor's attention to Section 1504.2, called scope and responsibility, Part A.

The responsibility for the compliance with the regulations of this part is placed upon the

employer as defined in 1504.3C.

B. It is not the intent of the regulations of this part, to place additional responsibility or duties on owners, operators, agents or masters of vessels, unless such persons are acting as employers. Nor is it the intention of these regulations to relieve such owners, operators, agents, or masters of vessels from responsibilities or duties now placed upon them by law, regulations or customs.

MR. GIUFFRA: Your Honor, I believe the case was quite clear that the enforcement and the applicability of those regulations are only against the employer and not against the defendant shipowner.

MR. BUSHLOR: It is not clear that the -- the problem wrose --

THE_COURT: All right, I will look at it.

MR. BUSHLOR: The problem arose yesterday
in front of Judge Judd. I ask your Honor to take
judicial notice as a standard of care in the Joint
Maritime Safety Code, prepared by the New York
Shipping Association, in cooperation with the
International Longshoreman's Association and portions
of the New York Joint Safety Committee in which under

part Q, Section number 3, had it, housekeeping. Vessels.

Slippery conditions shall be eliminated as they occur.

MR. GIUPPRA: Your Honor, again I would like to note my objection to the Court taking judicial notice of that regulation.

THE COURT: All right.

MR. GIUFFRA: And that your Honor --

THE COURT: I will take note of it that there is such a law orregulation. All right.

MR. BUSHLOR: Thank you.

MR. COMMETTEE: If your Honor should reach that point where it would be considered in connection with the third-party complaint, I merely sugges, to the Court, that this refers to conditions of the vessel, not a gangway, which is always under the control of the vessel.

THE COURT: All right. Plaintiff rests?
MR. BUSHLOR: Yes.

One more thing. I would like to read from the examination before trial of Gerald Gordon, who testified that he was an officer of the vessel upon which the accident occurred, as a second mate. MR. GIUFFRA: Well, I don't think anyone
will have any objection. But the only suggestion
I would make, is this. This is on file. And when
we brief the matter, we can say to your Honor, please
read question 10 or --

MR. BUSHLOR: Well, I don't want -- all right.

THE COURT: Whatever you want.

MR. BUSHLOR: This is question -- page 8.
Shall I read it, your Honor?

THE COURT: Yes.

MR. BUSHLOR: Fage eight, line four.

"Question: During the period when you were on daty from eight o'clock in the morning until 1600 hours, do you recall whether there was anyone aboard the vessel cleaning the snow?

"Answer: According to the log book on January 1st, there was no one from the shore -- any shore gang aboard, cleaning the ship.

"Wait. Excuse me. 1300 hours.

Shore gang on board. Is that entry of 1300 hours, is that entry in your handwriting?

"Answer: Yes.

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"Question: What does that indicate?

"Answer: That someone from the shore came aboard and -- a gang, some men. I don't know exactly the number of them, that their sole purpose was to clean the ship, the gangway, and any on deck area where people would walk, to keep it clean of snow.

"Question: Was there any cargo activity
being carried out on January 1, 1971?

"Answer: No cargo activity."

MR. GIUFFRA: Your Honor, the whole testimony, I would like to introduce in evidence at this time.

THE COURT: It's filed, in any event.

MR. GIUFFRA: I have the original here.

THE COURT: All right. It's filed, isn't it?

MR. GIUFFRA: No, it is not.

MR. COMMETTEE: I thought it had been filed.

MR. BUSHLOR: If your Honor please, _ N object to the entire testimony. I reserve objections in the testimony.

MR. GIUFFRA: I think --

MR. BUSHLOR: You can read whatever you want.

MR. GIUFFRA: No. I think once you open up

the --

MR. BUSHLOR: Not every particular part of it. You can read whatever you want.

THE COURT: You can read the whole thing.
He can read the whole thing.

MR. BUSHLOR: But I have objections to the questions that I think are improper.

MR. GIUFFRA: Well, your Honor, I would like to -- you want me to physically read in the whole thing at this time?

THE COURT: Any objection to the same question?
MR. MUSHLOR: I read it four times.

THE COURT: Why dont you do this? Mark it for the record. And if there are any objections to any of the questions, submit it with your brief, and the Court will rule on it.

MR. BUSHLOR: If your Honor please, as long as there is no jury here, I can leave it to your Eonor to realize what objections I would make.

THE COURT: Something that will cover it.

MR. BUSHLOR: I think you can cover me.

THE COURT: All right.

MR. BUSHLOR: I won't object to it being introduced in evidence.

MR. GIUFFRA: Would you mark this as the next exhibit?

THE COURT: We are going to have the briefs.

MR. BUSHLOR: Are we?

THE COURT: Findings of fact and conclusions of law. I think that will be best.

MR. BUSHLOR: We would waive that, if your Honor didn't want to --

THE COURT: I think it's better if you submit them. Then I will get a feeling of the case.

Especially on this type of case, where the interval has been so great.

THE CLERK: Deposition of Gerald Gordon marked in evidence as Defendant's Exhibit I.

MR. GIUFFRA: Your Honor, I am looking for the vessel's logbOok, which is also marked.

MR. BUSHLOR: I think there is an indication in there about the logbook.

MR. GIUFFRA: Yes.

MR. BUSHLOR: That will take care of the log.

THE COURT: Plaintiff rests.

MR. BUSHLOR: Plaintiff rests.

THE COURT: How about the defendant?

MR. GIUFFRA: Your HOnor, we have several witnesses. My problem is trying to schedule them within your schedule.

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THE COURT: When do you want to bring them in?

MR. GIUFFRA: I think probably tomorrow morning.

THE COURT: What is on for tomorrow morning?

Let me hear that.

MR. BUSHLOR: Your Honor, I think I should be apprised as to who the witnesses are going to be if

MR. COMMETTEE: Maybe he will change his mind.

MR. BUSHLOR: Right.

they know.

MR. GIUFFRA: Your HOnor, I have the logbooks for that day, January 1, and January 2, 1971.

THE COURT: All right.

MR. GIUFFRA: Do -you want to mark these as separate exhibits?

THE_COURT: The clerk will mark them.

MR. BUSHLOR: If your Honor please, I won't raise an objection as to in the ordinary course of business.

THE COURT: They are the ledger sheets.

MR. BUSHLOR: These are not the original sheets are they? Copies of the log?

MR. GIUFFRA: The only ones I see are copies of the log. This is the log which is signed by Gordon, who testified.

MR. BUSHLCR: Is that a copy or an original?

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MR. GIUPFRA: It seems to me to be a copy.

They write into it.

MR. BUSHLOR: All right.

MR. GIUFFRA: I think the original logbook goes to the Commission and this one stays in the office.

MR. BUSHLOR: Are you going to mark them as one exhibit.

THE CLERK: Two. It will be Defendant's Exhibit J and K in evidecne.

THE COURT: All right. This will be on at eleven o'clock tomorrow morning.

MR. GIUFFRA: Your Honor, wehave another exhibit.

THE COURT: What?

MR. GIUFPRA: This is an invoice submitted to Moore McCormack Lines by Land Coast Industries Corporation, indicating that the snow removal work was carried on on January 1, 1971.

MR. BUSHLOR: I can see that, your Honor. We don't need that. I have conceded it.

THE COURT: You can see that there was some snow removal people sent there.

MR. GIUFFRA: Can I mark this?

THE COURT: Sure. It's non-jury.

THE CLERK: Invoice marked in evidence as Defendant's Exhibit L.

THE COURT: All right. Can you make it at eleven o'clock tomorrow morning?

MR. GIUFFRA: Fine, your Monor.

MR. BUSHLOR: Yes.

THE COURT: All right, eleven o'clock in the morning. That will give me a chance to get finished with the other business of the Court.

All right, gentlemen.

(Whereupon, an adjournment was taken to Tuesday, September 24, 1974, at 21 o'clock A.M.)

MEMORANDUM DECISION BY COSTANTINO, D. J.

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK CHARLES SCALAFANI, Plaintiff, 72-C-572 v. MOORE MCCORMACK LINES, INC., MEMORANDUM Defendant and Third-Party DECISION Plaintiff, FEB 10 1 5 v. UNIVERSAL TERMINAL AND STEVEDORING CORP., Third-Party Defendant Appearances:

Irving B. Bushlow, 26 Court Street, Brooklyn, New York,
for plaintiff

Dougherty, Ryan, Mahoney, Pellegrino & Giuffra, 576 Fifth Avenue, New York City, for defendant and third-party plaintiff

Commette, Quencer & Annunziato, 60 East 42nd Street, New York City, for third party defendant

This is an action by a longshoreman against the owner of a ship for damages resulting from plaintiff's fall on a platform leading to the deck of defendant's ship. The shipowner impleaded plaintiff's employer, a stevedoring company. Trial without a jury was held solely on the issue of liability on May 6 and September 23 and 24, 1974. The Longshoreman's and Harbor Workers' Compensation Act Amendments of 1972, Pub. L. No. 92-576, § 18(a), 86 Stat. 1263, amending 33 U.S.C. § 905 (1970) [hereinafter called "the 1972 Amendments"] which substantially changed the law in this area, are inapplicable since the date of injury was prior to the effective date of the 1972 Amendments, Addison v. Bulk Food Carriers, Inc., 489 F.2d 1041, 1043 (1st Cir. 1974); see Falletta v. Armatori S p.A Genoa, 476 F.2d 316 (2d Cir. 1973); Reyes v. Marine Enterprises, Inc., 494 F.2d 866, 868 (1st Cir. 1974).

The court finds the following facts: The S.S.

Mormacdrago, owned and operated by defendant Moore McCormack

Lines, Inc. [hereinafter "Mormac"] was moored to the 23rd

Street Pier on January 1 and 2, 1971. On January 1, it

snowed from 8:00 a.m. until after 4:00 p.m. At 1:00 p.m.

on January 1, a shore gang employed by Atlantic Coast Industries Corporation came aboard the Mormacdrago pursuant to a contract with defendant Mormac to shovel snow off the gangway, platform, and decks. Plaintiff, an employee of third party defendant Universal Terminal and Stevedoring Corporation [hereinafter called "Universal"], started to go aboard the vessel at 2:00 p.r. on January 2 to take a coffee order from the gang aboard the vessel. To reach the deck from the top of the gangway, it was necessary for him to cross a platform on which he noticed patches of ice, snow, and sawdust. There were no handrails on a portion of the platform. Plaintiff attempted to walk across the platform to the best of his ability. Slipping on a patch of ice, snow, and sawdust at a point in the platform where there was no handrailing, he fell on his right knee, twisting his right ankle. Plaintiff was not contributorily negligent. The fall was mitnessed by a fellow longshoreman, Mr. Anthony Misseri; the latter saw a skidmark in the vicinity of plaintiff's fall.

Plaintiff claims that defendant is liable to him on two grounds - unseaworthiness and negligent filure to

provide a safe place to work.

Unseaworthiness

Although the 1972 Amendments preclude a longshoreman from bringing an action for unseaworthiness against a vessel owner, the law which antedates the statute and is applicable here permits such an action. Seas Shipping Co. v. Sieracki, 328 U.S. 85 (1946). Unseaworthiness exists where there is such a condition of slipperiness that the platform is not reasonably fit for its intended use by the crew, see Rice v. Atlantic Gulf & Pacific Co., 484 F.2d 1518, 1321 (2d Cir. 1973). In this court's judgment, the existence of the slippery patches, together with inadequate handrails or other support aids rendered the platform not reasonably fit for its intended use. It follows that the platform was unseaworthy at the time of plaintiff's fall. Since the unseaworthy condition proximately caused plaintiff's fall, defendant is liable for damages caused by the unseaworthy condition of the platform.

Negligence

A shipowner owes the duty of exercising reasonable

care towards those lawfully aboard the vessel who are not members of the crew. Kermarec v. Compagnie Generale,

358 U.S. 625 (1959). The duty of exercising reasonable care entails providing a longshoreman with a safe place to work and safe passage to and from that place. Mendoze v.

A.S. Ludwig Mowinckels Rederi, 293 F. Supp. 1319 (S.D.N.Y.

1968); lA Benedict on Admiralty § 112. To establish that defendant shipowner negligently failed to meet this duty, plaintiff must show that defendant's actions or failure to act created an unsafe condition of which defendant had actual or constructive notice. Rice, 484 F.2d at 1320. To recover damages, plaintiff must show that defendant's negligence proximately caused his injuries.

The portion of the platform where plaintiff slipped was in an unsafe condition because of the presence of slippery patches of ice, snow and sawdust and the absence of handrailings or other sufficient support devices.

Defendant had either actual or constructive notice of the unsafe condition; an employee named Gerald Gordon, whose duties included supervision of the platform, stated at a deposition that he inspected the platform as early as 8:00

a.m. on the date of plaintiff's fall. The evidence fails to indicate an appreciable change in the condition of the platform from that time to the time of plaintiff's fall. There is no question that defendant had a reasonable amount of time prior to plaintiff's fall at 2:00 p.m. to remedy the dangerous condition which its employee, Mr. Gordon, should have observed. Accordingly, the court finds that defendant Mormac was negligent in failing to correct the unsafe condition within a reasonable length of time after actual or constructive notice, see Blier v. United States

Lines, 286 F.2d 920 (2d Cir. 1961). Since this negligence proximately caused plaintiff's fall, this court holds defendant Mormac liable to plaintiff for its negligence.

Defendant's Claim for Indemnity

Defendant M. mac's claim against Universal is

based upon an express or implied warranty of workmanlike

performance owed to Mormac by Universal. Whether "a hazard

is created by the negligence of the shipowner or otherwise,

the stevedoring firm is liable for indemnity if a workman
like performance would have eliminated the risk of injury,"

Nicroli v. Den Norske Afrika-og Australielinie Wilhelmsens

Dampskibs-Aktieselskab, 332 F.2d 651, 656 (2d Cir. 1964); DeGioia v. United States Lines Co., 304 F.2d 421 (2d Cir. 1962). In the instant case, longshoremen employed by Universal boarded the ship on January 2 at 8:00 a.m. These longshoremen must be charged with actual or constructive knowledge of the condition of the platform at that time. Knowledge of a dangerous condition by a member of a stevedoring gang is imputed to his firm. Bertino v. Polish Ocean Line, 402 F.2d 863, 366 (2d Cir. 1968). The "implied warranty of workmanlike performance requires stevedores to remove defects and dangerous conditions on vessels on which they are employed and generally to see that the longshoremen work under reasonably safe conditions" Bertino, 402 F.2d at 866. Failure to comply with this duty renders Universal liable to Mormac for breach of warranty:

> a stevedore or other third-party defendant can undoubtedly be held for failure to correct a hazardous condition or prevent its employees from exposing themselves to danger of which it has knowledge, actual or imputed.

McLaughlin v. Trelleborgs Angfartygs A/B, 408 F.2d 1334 (2d Cir. 1968) (dictum), cert. denied, 395 U.S. 946 (1969).

The case of Nye v. A/S, D/S Svendborg and S/S AF 1912 A/S, 501 F.2d 376 (2d Cir. 1974), relied on by Universal, is distinguishable; indemnity was denied in Nye because, unlike in the instant case, plaintiff's employer "could not have known" of the condition which caused plaintiff's injury. Nye, 501 F.2d at 380. Accordingly, this court holds that Universal is liable to Mormac for whatever sums are assessed in plaintiff's favor against Mormac.

The above shall constitute the court's Findings of Fact and Conclusions of Law pursuant to Rule 52(a), Fed.R.Civ.P.

Mr. Cotolin

DEFENDANT'S NOTICE OF APPEAL.

UNITED						
EASTERN	DISTR	CT	OF	HEM	YORK	

CHARLES SCALAFANI,

Plaintiff.

- against -

MOORE-McCORMACK LINES, INC.,

NOTICE OF APPEAL

Defendant and Third-Party Plaintiff,

Defendant and 72 Civ. 572 (MC)

*

- against -

UNIVERSAL TERMINAL AND STEVEDORING CORP.

Third Party Defendant.

Notice is hereby given that the defundant appeals to the United States Court of Appeals for the Second Circuit from the judgment entered herein on February 10, 1975 in favor of the plaintiff against the defendant, which judgment determined the question of liability only.

Dated: New York, New York March 12, 1975

DOUGHERTY, RYAN, MAHONEY, PELLEGRINO & GIUFFRA

BY: ROBERT J. GIUFFRA ROBERT J. GIUFFRA

556 Eifth Avenue Mew York, New York 10036

TO: IRVING B. BUSHLOW, ESQ.
Attorney for Plaintiff
26 Court Street
Brooklyn, New York 11242

COMMETTE, QUENCER & ANMUNZIATO, ESQS. Attorneys for Third-Party Defendant 60 East 42nd Street New York, New York 10017

NOTICE OF APPEAL BY THIRD PARTY DEFENDANT.

UNITED	S	TATES	DIS	TRI	CT	C	OURT
EASTER							

CHARLES SCALAFANI,

Plaintiff.

-against-

MOORE-McCORMACK LINES, INC.,

Defendant and Third-

72 Civ. 572

Party Plaintiff.

NOTICE OF APPEAL

UNIVERSAL TERMINAL AND STEVEDORING CORP.,

-against-

Third-Party Defendant.

Notice is hereby given that Universal Terminal and Stevedoring Corp, the third-party defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the judgment determining liability herein entered in this action on the 10th day of February, 1975.

Dated: March 12, 1975

Commette, Quencer & Annunziato McHugh, Heckman, Smith & Leonard

Attorneys for Third-Party Defendant

Services of three (3) copies of the within Solut approduxis hereby ac'mitted this 13 day of Solve 1975

Robert South

Services of three (3) copies of

the within Tain Cappendix is

hereby admitted this / 3 day

of young

Attorney for plaintiff